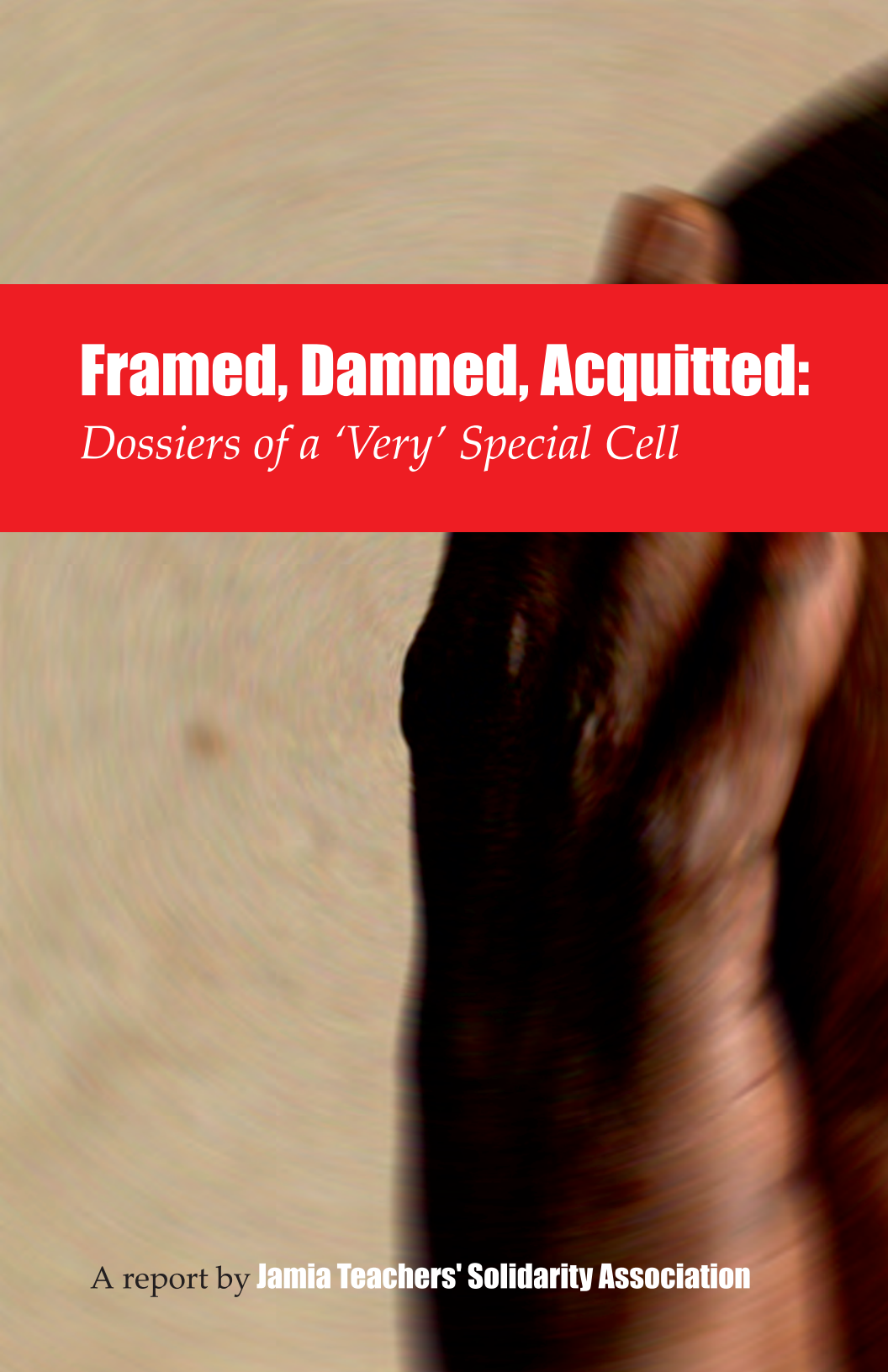

Framed, Damned, Acquitted:

Dossiers of a 'Very' Special Cell

A report by **Jamia Teachers' Solidarity Association**

After Release from Prison

Awake.
Where are you?
At home.
Still unaccustomed-
awake or sleeping-
to being in your own home.
This is just one more of the stupefactions
of spending thirteen years in a prison.
Who's lying at your side?
Not loneliness, but your wife,
in the peaceful sleep of an angel.
Pregnancy looks good on a woman.
What time is it?
Eight.
That means you're safe until evening.
Because it's the practice of police
Never to raid homes in broad daylight.

– Nazim Hikmet

Framed, Damned, Acquitted

Dossiers of a 'Very' Special Cell

A report by
Jamia Teachers' Solidarity Association

Also by Jamia Teachers' Solidarity Association

'Encounter' at Batla House: Unanswered Questions (2009)
The Case that Never Was: The 'SIMI' Trial of Jaipur (2012)

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Preface

When human rights activists, or families of those arrested on charges of terrorism, allege foul play on part of the investigating agencies, the usual response is this: Surely, there must have been some involvement, or else why would the police arrest him, and not me?

The findings of this report counter and contest the complacence of such all too familiar commonsense. We document here 16 cases, in which those arrested, in main by the Special Cell of Delhi Police, were accused of being operatives and agents of various terrorist organizations (Al Badr, HUJI, Lashkar), and charged with the most heinous of crimes: sedition; war against the state; criminal conspiracy, planning and causing bomb blasts; training of terrorists; collection of arms, ammunition and explosives and the transfer of funds for terrorist activities. The penalties demanded by the police and prosecution in these cases were also, correspondingly, the most severe: in most cases, life sentence or the death penalty. However between 1992 and 2012 a large number of those arrested were acquitted of all charges by the courts.

The report documents the story of these acquittals. It draws primarily on the court judgments, but also on media reports of the arrests and the trial that followed. The evidence that the report presents shows clearly that the acquittals were not simply for want of evidence. What judgment after judgment comments on is the manner in which the so-called evidence provided by the police and the prosecution was tampered with and fabricated, how story after story as presented by the prosecution was unreliable, incredulous, and appeared as concocted.

The fabrication of evidence is a serious offence under the Indian Penal Code.

> Indian Penal Code (IPC)
>
> Section 195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment
>
> Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which [by the law for the time being in force in [India] is not capital, but punishable with [imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

You will find in this report, instances where the courts clearly indict the Special Cell for framing innocents; reprimanding them for violating due process and fabricating evidence; ordering a CBI probe against the Special Cell, as well as directing the filing of FIR and the initiation of departmental enquiries against them.

In the Dhaula Kuan fake encounter case, the Court was of the opinion that, "there cannot be any more serious or grave crime than a police officer framing an innocent citizen in a false criminal case. Such tendency in the police officers should not be viewed or dealt with lightly but needs to be curbed with a stern hand."

Acquitting an alleged terrorist of the Peoples' Liberation Army of Manipur, the Court concluded that "the police got him targeted to become a victim of this crime."

The CBI investigating the apprehension of alleged operatives of Al Badr by the Special Cell was withering in its conclusions and sought "legal action against SIs Vinay Tyagi, Subhash Vats and Ravinder Tyagi" for fabrication of evidence.

In the Darshan Singh v. State of Punjab, (P&H) 1998(4) R.C.R. (Criminal) 164, the court observed:

"Police officials as we know, are interested in the success of the case detected by them and to achieve success in the case detected by them, they show sometimes vehemence also."

Further, referring to the rampant procedural lapses, the Court recalled "Peeraswmi Vs. State of NCT Delhi", 2007 (4) R.C.R. (Criminal) 339 where the Hon'ble Delhi High Court observed:

"This procedure is not a mere formality for the sake of it but it provides the safeguard against false implication of persons."

Not a single officer in any of the operations described here has suffered criminal proceedings for the framing of innocents. Adverse observations, strictures and censures from the court have not come in the way of promotions, gallantry awards and President's medals. Even after the National Human Rights Commission (NHRC) indicted ACP Sanjeev Yadav – a figure who will surface regularly in these pages – for staging an encounter in Sonia Vihar in 2006, he continues to head probes as crucial and sensitive as the attack on the Israeli diplomat in Delhi.

The paltry rate of conviction in such cases – a mere 30 per cent, as revealed by an RTI enquiry recently – is attributed to inefficiency, to bad investigating skills or poor infrastructure. A closer look however reveals an uncanny, almost scripted pattern in the cases:

1) Secret information, which can never be verified or disclosed, leads the police to the accused.

2) Public and independent witnesses are rarely joined in the actual operation, even when the accused are apprehended in public places with people present.

3) Private vehicles are used in the operation doing away with the need of logs thereby making it difficult to verify if any such operation did really take place.

4) The time and date of the actual 'picking up' of the accused is reveled by the subsequent trial to have been much earlier than that alleged in the police story. Illegal detention, a recurrent feature, is sought to be hidden from the court through blatantly concocted narratives.

5) Seizure memos are often made in the PS / Special Cell office, and not at the supposed time of seizure, often in the same handwriting and ink as the FIR

6) Senior officers are protected from appearing before the court by not making them witnesses

7) The nexus between Special Cell, central intelligence agencies and police force of conflict zones, especially Jammu and Kashmir, but also Manipur.

These men – whose cases we document here – were acquitted. Yet they all unjustly suffered the most harrowing of experiences for varying lengths of time: illegal detention and torture (physical and psychological), incarceration and trial. Acquittals were by no means the end of their tragedy for they returned from their experience to a different world: Businesses were destroyed; family members were broken having suffered the humiliation and trauma of being associated with "terrorists"; children had to abandon their studies and the normality of everyday life, while parents passed away in grief and despair. Some cases like that of young Md. Amir Khan, which was a practically open and shut case, where the prosecution had virtually no leg to stand on, got drawn out for 14 painful and long years.

And yet, they have been offered no apology, no rehabilitation. Worse still, none of the officers guilty of framing them have been acted against.

Part of the trauma of those arrested and their families on such serious charges results from the reporting in the press, which is more often than not, tilted heavily in favour of the investigating agency. Almost without exception, the media has acted as 'faithful

stenographers' of the police; not only presuming the guilty to be innocent but also failing to follow cases where innocence is established. We have tried to reproduce the reportage that appeared at the time of arrests in as many cases as possible. The cases documented below caution us against taking the police version at face value. The bombastic claims of 'breakthroughs' and 'achievements' by the police must always be subjected to questioning and independent analysis.

To those who say, 'there is no smoke without fire', we hope that this report will serve as a grim eye opener. The reasons behind the police – the Special Cell in this case, but this could be true for any other investigating agency as well – framing innocents can be many: to settle scores, to teach a lesson, to buy favours, to dispose of petty informers past their usefulness, to 'help out' colleagues in other parts of the country.

The 16 cases we present here are only the proverbial tip of the iceberg, and simply indicative of the extent of the malaise affecting our policing and criminal justice system.

Case 1

State Versus Tanveer Ahmad, Shakil Ahmad, Ishtiaq Akhtar Dar, Md. Akhtar Dar, Md. Yusuf Lone, Abdul Rauf and Ghulam Md.

FIR No.: 169/92
Police Station: Lajpat Nagar
Under Sections: 4 and 5 TADA (P) Act 4 and 5 Explosive Substances Act read with section 120 B IPC, 25/54/59 Arms Act
Sessions Case No.: 50/2001
Dae of Judgement: 1st August 2002

Judge: S. N. Dhingra, Additional Sessions Judge, New Delhi

The Prosecution's Story:

The case dates back to 1992. The prosecution held that the Special Cell of Delhi Police received information that some Kashmiri terrorists had sneaked into the capital with the intention to commit high profile terrorist acts. Further, that they had made their base somewhere in south Delhi in the house of an exports dealer who possessed one white Maruti Gypsy and one red Maruti van, both bearing J&K numbers and both being used in the service of the terrorists' nefarious designs.

29th April 1992:

Specific information was received that Kashmiri terrorists had been spotted driving around in the red Maruti van in Central Market, Lajpat Nagar. A raiding party was immediately formed and dispatched. At about 9 pm, when the police party was near Shiv Mandir Marg, Lajpat Nagar II, close to the water supply office of Jal Vihar, they saw the said vehicle approaching them. They signaled it to stop. The driver initially slowed down but then raced and sped away. After a chase, during which Inspector Lal Ram fired a shot in the air, the occupants, five in number, were overpowered and apprehended. The five were revealed to be Tanveer Ahmad, Shakil Ahmad, Ishtiaq Akhtar Dar, Md. Akhtar Dar (the driver) and Md. Yusuf Lone.

Recoveries:

- A search of the van revealed a blue coloured bag belonging to Tanveer Ahmed. It contained the following items: six photographs of places like Red Fort, Delhi Gate, India Gate and other such places; six blue coloured plastic explosive sticks wrapped in newspaper; one green coloured cloth with 'Islamic writing'; Rs 20,000 in cash and a diary.
- From Shakeel Ahmed was recovered a raxine bag containing three detonators, battery cells, one metre of electric wire, photographs of important buildings, one booklet titled, "Cry for Freedom will not Stop" published by Ikhwan Publications and issued by Muslim Brotherhood. The booklet allegedly

exhorted Muslims to take up arms to liberate Kashmir.

- 2400 US dollars in cash was seized from Md. Akhtar Dar.

Disclosures:

Tanveer Ahmad disclosed that he could lead the Special Cell to his two companions, Abdul Rauf and Ghulam Md., who were present in M 27 Lajpat Nagar. He would also help in the recovery of more explosives from various hiding places in Delhi and elsewhere. Shakeel Ahmed and Ishtiaq Dar made similar disclosures.

30th April 1992:

Based on the information elicited through the disclosures, the police party raided the house in Lajpat Nagar and found Abdul Rauf and Ghulam Mohammad. Rauf led them to the cupboard where the following items were hidden: booklets by Ikhwan Publications, press cuttings, diplomatic list, Rs 10,000 in cash, four plastic explosives, two detonators, four pencil cells with electric wire and one key. A white Maruti gypsy parked in front of the house was also seized. Property documents of the house were also seized which showed that the property was registered in the name of Ghulam Haidar Dar and Akhtar Hussain Dar.

2nd May 1992:

The police visited Abdul Rauf's house in Meerut (UP) and seized one 9mm pistol of Pakistani make with a loaded magazine and three live cartridges.

12th May 1992:

Abdul Rauf led the police to to four hand grenades that were hidden in the toilet flush of Tawi Hostel in Regional Engineering College, Srinagar.

13th May 1992:

Tanveer Ahmad led the police to a pistol buried in a pit near a tree outside the Lajpat Nagar flat.

How the Case Fell Apart:

The prosecution produced 14 witnesses, all of whom, barring one, were police persons. All of them repeated the story outlined above.

Illegal detention Conclusively Proved:

The accused however continued to maintain throughout the trial – in their cross examination as well in their statement under Section 313 CrPC – that they were picked up from their respective places on the 25th and 26th April 1992, much prior to 29th April 1992, when the police claimed to have arrested them. In the intervening period, the Defence argued that they were kept in illegal detention and a false case foisted upon them.

The following evidence was placed before the Court to substantiate the Defence's claims:

- **Defence Witness** Abdul Quaim (brother of Abdul Rauf and resident of Meerut) testified in court that on 26th April, at about 3.00-4.00 am, he found the police entering his house by putting a ladder onto the roof. The police questioned him about his brother and forced him to take them to his brother's home, which was in another street close by. Rauf was apprehended thus in the intervening night of 25th-26th April 1992. The police assured Quaim and Rauf's wife, Rana Qausar, that Rauf would be released soon after interrogation. The following day, when Rauf failed to return home, Rana Qausar, sent a telegram to Senior SP , Meerut, expressing her fears that her husband might be implicated in a false case. The same day, she also moved an application before the CJM, Meerut, informing him about the taking away of Rauf by the police. The CJM repeatedly called for a report from the police but no report was submitted until 29th April 1992. The police report said that Abdul Rauf had been taken away by Lodhi Road Lajpat Nagar (Operation Cell) and that he was not in the custody of Meerut police.

- The Defence placed before the court, both the telegram (dated 26th April 92) and certified copies of the proceedings of the CJM Meerut. These, observed the Court, "made it abundantly

clear that Abdul Rauf was not arrested by the police on the night of 29th April 92 as alleged but he was apprehended prior to 29th April 1992."

- Defence Witness Ghulam Haider, businessman and owner of the house in Lajpat Nagar, which was apparently the scene of much action, testified that he returned to Delhi from Kashmir on 25th April 1992. Upon returning, he found his house locked and his business partner, Akhtar Hussain Dar, as well as his employees, Md. Yusuf Lone and Ghulam Md., missing. Enquiries with the neighbourhood watchmen revealed that they had been arrested by the police. The next morning he submitted an application to the Police Station Lajpat Nagar and sent a telegram to the Police Commissioner. He also filed a habeas corpus writ through his counsel. Copies of all three were placed before the Court. In his cross-examination, he stated that he came to know about the arrest of his colleagues from the evening edition of *Mid Day* newspaper on 29th April 1992.

Court's Remarks:

The Court noted that these documents filed by the Defence witnesses "caused serious dent in the prosecution story". The Prosecution was unable to explain how the Defence witnesses could have filed applications and writs against the arrests in advance if the arrests were actually in fact made on 29th April 1992. Therefore the "rest of the prosecution story about recoveries from the accused persons on or at their instance on 29th April or after 29th April 92…also stands in cloud of doubt."

Thus the Court acquitted all the accused.

Case 2

State Versus Farooq Ahmed Khan, etc.

FIR No.: 517/96
Police Station: Lajpat Nagar, New Delhi
Under Sections: 302/307/12B, 124A, 212 IPC; Sections 3, 4 & 5 of Explosive Substance Act; Section 25 of Arms Act
Sessions Case No.: 47/09
Date of Judgement: 8th April 2010

Judge: S. P. Garg, Additional Sessions Judge, DJ-IV/ New Delhi, District Patiala House Courts.

Background:

On 21st May 1996, Central Market Lajpat Nagar, (Delhi) was rocked by a bomb blast. Seventeen people were arrested in this case and accused of committing the terror attack. Fourteen years later, on the 8th October 2010, the Patiala House Sessions Court delivering its 498 paged judgment, acquitted four of the accused, namely Mirza Iftqar Hussain, Latif Ahmed Waza, Syed Maqbool Shah and Abdul Gani, of all charges leveled against them in connection with the blast.

Four of the accused were held guilty and convicted for the commission of offence punishable *u/s* 120B IPC, 120B *r/w* Sec. 302 and 307 IPC, and 120B *r/w* Sec. 436 IPC.

Two of the accused were held guilty and convicted for the commission of offence punishable under the Explosive Substances Act. Since they had already served 14 years in prison, double the maximum sentence of the Act under which they were subsequently convicted, they were released.

The Prosecution's Story:

A powerful explosion took place at about 6.30 p.m. at the Central Market, Lajpat Nagar on 21st May 1996 in which 13 people were killed and at least 38 injured. According to the case that was registered by the Delhi Police (FIR No. 517/96, P. S. Lajpat Nagar), immediately after the blast, Anand Prakash Additional SHO (P. S. Lajpat Nagar) rushed to the spot with his staff. Later a case was registered on the statement of Subhash Chand Katar, a shopkeeper of Pushpa Market who described the blast that took place in a white Maruti car, about 10 ft away from his shop. However, he was unable to either give the registration number of the Maruti car or recollect about the person(s) who parked the car in front of his shop. In the course of immediate follow-up investigations, the police was able to ascertain the registration number of the Maruti car as DL 2CF 5854. The police also claimed that this car was stolen on the night of 17th/18th May 1996 from A-51, Nizamuddin East, New Delhi and that the owner of the car had registered a complaint

at P. S. Nizamuddin.

The prosecution also claimed that on 21st May 1996 terrorists of Jammu & Kashmir Islamic Front (JKIF) took responsibility for the bomb blast at Lajpat Nagar through telephone calls made to the press/media. These calls were traced to a telephone number in Anantnag, Kashmir.

The Arrests:

24th-25th May 1996:

In connection with the blast, on 24th May 1996 with the help of the Jammu and Kashmir Police, Farooq Ahmed Khan and Farida Dar were taken into custody. Later, on being informed by the J&K police about the apprehension of the two accused, Inspector Jasbir Singh of the Delhi Police went with a police team to J&K and arrested Farooq Ahmed Khan and Farida Dar from Srinagar on 25th May 1996. During their interrogation, both the accused confessed to their role in the Lajpat Nagar blasts. Further, Farooq Ahmed confessed to making the telephone calls to the media as the Chief Spokesman of JKIF. The billing records of the telephones of Farooq Ahmed and Farida Dar between 10th May 1996 to 30th May 1996 revealed that on 21st May 1996 at about 8.39 p.m., various telephone calls were made to PTI, NDTV and Zee TV, among others.

14th June 1996:

On the basis of information received from an 'informer', Delhi Police arrested Md. Naushad and Mirza Iftiqar Hussain on 14th June 1996 from Platform No. 4 of the New Delhi Railway Station as they were about to board the Varanasi Express to go to Gorakhpur. Their interrogation and disclosure statements revealed that they were headed for Gorakhpur to collect cash from their associates, Mirza Nissar Hussain and Md. Ali Bhatt; both of whom according to the prosecution were also involved in the Lajpat Nagar bomb blast case.

16th June 1996:

Later on the basis of their (Md. Naushad and Mirza Iftiqar) disclosure statement, Inspector Rajinder Singh arrested Md. Ali Bhatt and Latif Ahmed Waza from Gorakhpur on 16th June 1996 and brought them to Delhi.

17th June 1996:

The police arrested Syed Maqbool Shah on 17th June 1996.

26th July 1996:

Abdul Gani and Javed Ahmed Khan were arrested by the Jaipur police and brought to Delhi and later arrested by the Delhi Police. Prior to this on 2nd June 1996, they were picked up ('apprehended') by the Ahmedabad ATS, Gujarat who suspected their involvement in the Lajpat Nagar blasts.

Recoveries:

During the course of further interrogation (on 4th June 1996) and disclosure, the accused Farooq Ahmed and Farida Dar admitted that there were explosives and ammunitions lying at their residences. Thus a police team consisting of ACP P.P. Singh and Inspector Pawan Kumar accompanied the accused to their residences in Srinagar. Besides recoveries allegedly made from their Srinagar residence, further recoveries were allegedly made by the police from other accused.

Following recoveries, over a period of time, were shown by the police:

- One AK 56 assault rifle, two magazines, 59 rounds, two RDX slabs and some incriminating documents—*recovered from Farooq Ahmed Khan.*
- A rexin bag containing two RDX slabs and 5 timers—*recovered from Farida Dar.*
- Two RDX slabs, one timer, one iron solder, one wire cutter, two araldite tubes, one gas cylinder, one detonator—*recovered from*

Md. Naushad's residence.

- A second class railway ticket for two persons—*seized from Md. Naushad.*
- A rupee two currency note & two hand grenades—*recovered from Latif Ahmed Waza.* [The two-rupee note was meant to be handed over to the accused Mirza Iftqar Hussain as a code for delivery of money; grenades were recovered from Latif's house].
- Rupees one (01) lakh seized from a house in Shalimar Bagh, Delhi—the accused Latif Ahmed Waza allegedly identified the said house.
- Documents and clothes of Farooq Ahmed and the stepney tyre of the Maruti car (DL 2CF 5854) used in the blast—*recovered from Syed Maqbool Shah's residence.*

On 10th June 1996 two of the accused, Farooq Ahmed and Farida Dar were produced at Patiala House Courts and then remanded to police custody.

Prosecution's Charges:

The alleged recoveries along with the recorded and disclosure statements of witnesses at different stages of investigation led the Delhi police to conclude that the Lajpat Nagar blasts incident was "the result of a conspiracy masterminded by Bilal Ahmed Beg and his associates to cause and carry out acts of terrorism and disruptive activities in India by use of bombs explosion so as to scare and create panic by such acts in the mind of the people and thereby to strike terror in the people".

How the Case Fell Apart:

To begin with, the Honourable Judge S. P. Garg remarked: "At the outset, it may be mentioned here that the prosecution case rests solely on circumstantial evidence. . . . No reliance has been placed by the prosecution on the testimony of any eyewitness who had witnessed the accused persons committing the offence".

Below we document the case of four of the accused who were exonerated by the trial court of all charges levelled against them by the prosecution. These cases highlight once again the familiar story of frame-up by the Special Cell and ruining of life of innocent due to inordinate delay in the criminal justice system. After having spent fourteen years—a period usually served by murder convicts—they walked free; a freedom that they were wrongly denied for such a long time.

The Case of Mirza Iftiqar Hussain:

In his recorded statement Mirza Iftiqar had pleaded that he was arrested from his residence at Bhogal in the intervening night of 27th/28th May 1996 and was kept in illegal confinement at the Special Cell at Lodhi Colony, New Delhi, for about 18 days. He also claimed that nothing had been recovered from him by the police.

Acquitting Mirza Iftiqar, the Judge observed that there were no allegations against the accused that prior to his arrest (14th June 1996) or that "he remained in contact with any of the accused persons or that he participated in the commission of the incident in any manner or that he procured any article used in explosion or that he provided any financial assistance to the co accused persons or that he provided any shelter to any of them after the incident . . . no incriminating substance was found in his possession. . . . His movements prior to the incident and subsequent to the incident were not ascertained."

Further the Judge remarked that the apprehension of the accused with another accused, Md. Naushad does not simply make "an incriminating piece of circumstance to infer his involvement in the incident." He further noted that the collection of Rs. 1 lakh by the accused from Mangal Dass was also not sufficient to establish his involvement as a 'conspirator' in this case. The court also underlined the abject failure of the prosecution to put anything on record to demonstrate the nexus between the accused, Farooq Ahmed Khan and the JKIF or to show that he had participated in

any of the activities of JKIF. The Judge ruled that in the in the absence of any material evidence, there was no basis for the police to arrest Farooq Ahmed in this case.

Citing the case of *State Vs. Nalini* in which the Supreme Court had categorically held that 'mere association with one of the conspirators or even knowledge of conspiracy is not enough', the Judge concluded: "The law in this aspect is very clear. In view of the paucity of any worthwhile incriminating circumstance against A4 [Farooq Ahmed], I am of the view that the prosecution has miserably failed to establish involvement of A4 in the commission of the incident."

The Case of Latif Ahmed Waza:

In his recorded statement, Latif Ahmed Waza had pleaded that he has been working as a carpet salesman in Naya Bazar near Hotel Garden in Kathmandu since 1992. Javed Ahmed Khan (accused No. 9), a relative, was the owner of the business establishment. Latif categorically told the court that he was picked up from Kathmandu by the Nepal police on 7th June 1996 and brought to the P.S. Delhi Bazar and despite the requirement of law he was not produced before any magistrate. He was one among the many Kashmiris who had been brought to the police station. On 9th June 1996 Latif Ahmed, along with Mirza Nissar Hussain and Md. Ali Bhatt were handed over by the Nepal Police to the Assistant Commissioner of Police (ACP) P.P Singh (Special Cell, Delhi Police). On 17th June 1996 they were produced before the Metropolitan Magistrate and made to sign various papers. Latif Ahmed did not make a disclosure statement. He also claimed that no incriminating material was recovered from his.

After hearing the arguments of the prosecution and the defence and weighing the material evidence placed on record, the Honourable Judge concluded that the prosecution had failed to collect and place evidence to establish that the accused Latif Ahmed Waza had ever remained in 'constant touch' with the co-accused or that he had ever attended any of JKIF's meetings, etc.

There was also no evidence to establish the he ever provided financial assistance to any of the co-accused or helped them in procuring ingredients used for manufacturing a bomb.

Further, the Judge noted that in their disclosure statements the other accused Farooq Ahmed and Farida Dar, did not attribute any role whatsoever to Latif Ahmed for hatching conspiracy to commit the incident.

The prosecution's case was that a two-rupee currency note had been recovered from Latif's possession which was ostensibly to be handed over to Mirza Iftqar to obtain Rs. 1 lakh from Mangal Dass. However, the Judge noted that such a recovery took place on 16th June 1996 when the conspiracy to cause bomb blast had already come to an end. Thus, the Judge remarked that there was neither the occasion nor the need for both Latif Ahmed and Md. Ali to travel to Gorakhpur from Nepal only for handing over a two-rupee currency note to Mirza Iftqar. Further, this work could have been accomplished by a single person. The court was thus inclined to disbelieve the prosecution version.

The Judge ruled that even if one were to assume that Latif Ahmed Waza had indeed delivered two-rupee currency note to Mirza Iftqar Hussain on 16th June 1996, it neither proves anything nor establishes him to be a member of a group hatching conspiracy to cause bomb blast that took place earlier on 21st May 1996, in Delhi. Moreover, the Judge noted that at the time of Latif's alleged apprehension at Gorakhpur on 16th June 1996, he was not found in possession of any incriminating article and the alleged recovery of arms and ammunition from his J&K residence had not been established beyond reasonable doubt by the prosecution.

The Judge commented that the testimonies of the witnesses were riddled with contradictions and inconsistencies and reiterated that mere association of the accused with one of the conspirators or even knowledge of conspiracy is not enough. The Judge relied upon the *State vs. Nalini* case, where the Honourable Supreme Court categorically observed that, "... So merely because a person

is shown to be an active worker of LTTE that by itself would not catapult him into the orbit of the conspiracy mesh to murder Rajiv Gandhi. It cannot be forgotten that a conspiracy for that purpose would be strictly confined to a limited member of persons, lest any tiny leakage is enough to explode the entire bubble of the cabal."

Delivering the verdict on Latif Ahmed Waza, the Judge remarked: "I am of the view that prosecution has failed to prove its case against him beyond reasonable doubt". Consequently the Judge acquitted Latif Ahmed Waza of all charges against him.

The Case of Syed Maqbool Shah:

In his recorded statement Syed Maqbool Shah denied that any incriminating evidence was recovered from him. He denied the recovery of the stepney tyre from his residence. He disclosed that he was arrested on the intervening night of 27th/28th May 1996. He also made no disclosure statement.

The Judge commented that the testimonies of the witnesses were riddled with contradictions and inconsistencies and reiterated that mere association of the accused with one of the conspirators or even knowledge of conspiracy is not enough.

The Court while delivering the verdict on the culpability of Syed Maqbool Shah yet again lamented the failure of the prosecution to prove beyond any reasonable doubt his participation in the blast in any manner whatsoever. Regarding the alleged recovery of the stepney tyre of the care used in blast and other articles (like clothes of accused Farooq Ahmed) from his residence, the court remarked that the prosecution had failed to establish that these belonged Farooq Ahmed Khan. Moreover, nothing "incriminating was recovered at his residence . . . showing his connection with JKIF", and there was nothing on record to show that the accused had any link with or had attended any of JKIF's "meetings with any other members of the said organization or else had ever remained in constant touch with them."

The Judge especially noted that the accused Maqbool Shah did not abscond from his place of residence even after two of the key alleged accused, namely Farooq Ahmed and Farida Dar were arrested by the police. The case against Maqbool Shah also fell flat because not a single Public Witness could testify to have accompanied the co-accused persons at the time of purchase of any article required for manufacturing/assembling of a bomb. Once again nothing was put on record to demonstrate the Shah had been in touch with any of the co-accused or had provided any financial assistance to any of them. The court also noted the shoddy manner of investigation and wondered as to why the police failed to examine or record statement of any of Shah's neighbour to find if there used to be any unusual activities at residence of the accused or that the co-accused ever visited his house. The court commented that the prosecution did not collect any evidence to show if Shah had ever provided shelter to any of the co-accused at any time or had facilitated them to carry out their plan.

Finally the Honourable Judge observed that the prosecution had made Maqbool Shah an accused solely by trying to connect him with another accused Farooq Ahmed on the basis of recovery of a stepney tyre—allegedly of the Maruti car used in the blast—and some clothes allegedly of Farooq Ahmed, recovered from the house of the accused. But the prosecution had failed to establish the articles thus recovered belonged to Farooq Ahmed Khan.

While delivering the verdict on Maqbool Shah, the Judge cited the Supreme Court judgement in the *State vs Navjot Sindhu (supra)* case where the Court had categorically stated that mere suspicion was not enough to prove the complicity of an accused in a criminal act and the Court cannot condemn an accused in the absence of 'sufficient evidence'. In this case finding the evidence non-existent and the prosecution's case very shaky, the Judge while acquitting Syed Maqbool Shah of all charges against him remarked: "In the present case, the circumstances relied upon by the prosecution against A8 [Maqbool Shah] do not lead to any inference beyond reasonable doubt of his involvement in the conspiracy. The

circumstances do not even remotely far less definitely and unerringly point towards guilt of A8."

The Case of Abdul Gani:

Abdul Gani pleaded that he was falsely implicated in this case and that nothing was recovered from him. On the intervening night of 30th May/1st June 1996, he was travelling by the Samtha Express from Vishakhapatnam to Delhi when he was arrested and brought to Ahmedabad. On 1st June 1996 he was produced before the Magistrate. He did not make any disclosure statement.

The Judge noted that the circumstance brought on record by the prosecution against the accused to prove conspiracy, is his arrest in case bearing FIR No. 12/96 [*u/s* 120B/121/122 IPC] along with two other men Rashid and Zulfikar on 1st June 1996. When the court specifically asked the Senior Public Prosecutor (SPP) as to how this circumstance itself was enough to prove the involvement of the accused in the (blast) conspiracy, the latter pointed out that Abdul Gani has been charge sheeted along with other co accused, since his name finds mention in the confessional statement made by the accused, Javed Ahmed Khan (accused No.9). However, the court noted that no other incriminating circumstance has been attributed to Adul Gani. The Honourable Judge thus remarked: "In my considered view, even if both these circumstances are taken into consideration, they do not even prima facie point out hatching of conspiracy by this accused with co conspirators." The court also noted that neither at the time of the apprehension of the accused, nor afterwards any incriminating article was recovered from him. Besides, the prosecution once again failed to establish that the accused if ever had been in touch co-conspirators at any time or had participated directly or indirectly in the commission of the offence. Neither anything was put on record to show that Abdul Gani ever visited Delhi or Srinagar and had any conversation regarding the incident with any other co-accused. Besides, there was nothing on record to show that he was even aware of the blast Lajpat Nagar, Delhi prior to his arrest in case FIR No. 12/96 at Ahmedabad. The Judge also pointed out that the alleged articles recovered in the

personal search of the accused at the time of his arrest were not connected with the commission of the incident.

Pointing to the clarity of law regarding use of confessional statement of an accused against a co-accused, the Judge noted that "the confession of a co-accused (in this case accused No.9) cannot be elevated to the status of substantive evidence which can form the basis of conviction of the co accused."

In the present case, the court argued that even if the confessional statement of co-accused Javed Ahmed Khan (accused No.9) was to be considered 'genuine' and acted upon, the fact remains that in the absence of any role attributed to the accused, Abdul Gani regarding the blast in question, mere mention of his name is not enough to prove his involvement in the commission of the offence or him being a co-conspirator. "Mere association with one of the conspirators or even knowledge of conspiracy is not enough in the absence of agreement of conspiracy". Hence the Judge acquitted him of all charges against him.

Life Post Arrest:

Acquitted Remains Jobless

Mail Today, Srinagar, March 19, 2012

Shah, an accused in the 1996 Lajpath Nagar blast case, was acquitted of all charges by the Delhi High Court after spending 14 years of his prime youth in Tihar jail.

Syed Maqbool Shah is waiting for Chief Minister Omar Abdullah to fulfil his promise of getting him a job.

His acquittal generated a lot of media buzz in the Valley and outside leading to the chief minister making a grand promise of his rehabilitation.

That was nearly

two years ago. "In a state where even a Matric fail gets a government job, why is he being denied one," asks his elder brother Peer Hassan.

"I don't know what do. I have no job and no hope of getting any. I remember chief minister Omar Abdullah had given a statement when I was released that I will be rehabilitated and provided with a job. But I was not given any job," Shah says.

[…]

To keep Shah engaged and find a match for him, his brothers have opened a makeshift shop for him outside his residence in Lal Bazar. "We want him to settle down. But who will marry a jobless person," asks Peer.

http://indiatoday.intoday.in/story/acquitted-lajpat-nagar-bomb-blast-accused-remains-jobless/1/178363.html

Case 3

State Versus Md. Amir Khan

FIR Nos.: 790/1996; 70; 71; 117/97; 137/97; 249/97; 262/97; 191/97; 751/97; 752/97; 379/97; 260/97; 951/97; 752/97; 405/97; 746/97; 631/1997

Police Stations: Various Police Stations in Delhi, Ghaziabad, Rohtak and Sonepat

Under Sections: 34, 120B, 121, 121A, 122, 320, 307, 435, 436 of IPC; 3, 4, 4(B), 5, 7 of Explosive Substances Act; 150 of Railway Act

Sessions Case Nos.: 51 of 1998/2004; 25 of 2006/2009; 18 of 2010; 111/98; 116/98; 95/98; 11/98; 100/98; 108/98; 109/98; 128/98; 357/2007; 115/98; 137/98; 113/98120/98; 104/1998

Date of Judgements: November 2000 to January 2012

Judges: Various Judges of Sessions and District Courts in Delhi, Ghaziabad, Rohtak & Sonepat

Background:

Md. Amir Khan's case has been at the centre of public attention—and for good reasons. It is a prime example of all that ails the policing and criminal justice system. Even the mainstream corporate media, usually disinterested in stories of those whose lives are destroyed by our investigating agencies became fixated with the tale of this young man who had spent more years in prison than outside. The volume of cases slapped against him—19 in all—meagreness of evidence against him, his acquittals one after another, all brought out starkly the manner in which innocents are framed in the name of fighting terror.

The cases against Md. Amir were spread across states including Delhi, Uttar Pradesh and Haryana. It was not some joint operation of police of these three states. Rather, Amir was arrested by the Delhi Police vide FIR no. 49/98 on 27th February 1998.

The Prosecution's Story:

Officials of the Delhi police, Inspector Rajinder Bhati, Inspector Dataram and Inspector Subhash Tandon stated the following:

Special watch was being kept over House No. 1001, Gali Anarwali, Telwada, Delhi. Two persons – later found to be Abdullah alias Haroon and Matiur Rehman alias Musa of Bangladesh – were found leaving the house under suspicious circumstances. The police followed these two and overpowered them at the Sadar Bazar Railway Station. Their search revealed a hand grenade and the two men disclosed that the house under watch belonged to Md. Amir Khan. He was the link with Bangladesh/Pakistan-based Abdul Karim Tunda. Together, they had hatched a conspiracy to cause blasts across the capital and other cities. In this case, an FIR 49/98 dated 27th February 1998 was lodged.

The prosecution story further proceeds that true to the information given by the two men apprehended, Amir arrived with his accomplice Md. Shakil alias Hamza at 6.30 in the evening at Signal Number 10 of Sadar Bazar Railway Stattion. They were both

apprehended. Amir's search revealed a revolver, live cartridges, a briefcase containing Rs 80,000, some dollars, diaries with maps and formulae for making bombs. Shakil's search revealed a tin box, an iron box, a thermos containing some powder. On questioning, both disclosed that they had executed blasts in various states, including the Frontier Mail. They further disclosed that their arms factory was at Pilkhua. Shakil and Amir then led the police to the factory – where they got explosives and materials recovered. They also led the police to the shops from where they had purchased material for making bombs. The recoveries were made in the presence of public witnesses Abdul Sattar, landlord of the plot on which the factory stood, and Chandrabhan, who was enlisted into the raiding party by the police when on way to Pilkhua. Both Abdul Sattar and Chandrabhan were the prime prosecution witnesses.

According to the prosecution version, upon interrogation, Amir and Shakil revealed their involvement in a series of blasts which had rocked Delhi and its neighbouring areas through 1997 and 1998, and which had remained unsolved till then. The Delhi Police—through its officers Inspector Rajender Bhatia, Inspector Subhash Tandon, Inspector Dataram and Inspector Rakesh Dixit—then informed and alerted the police of those states about their involvement, leading to the arrest of Md. Amir Khan and Md. Shakil in eighteen (18) more cases. It appeared that the biggest mastermind and bomber who had eluded the police of various states had finally been caught. All cases in Delhi were framed and heard in the TADA court.

Below we summarize the details of the various cases in different states to show how flimsy the prosecution's charges against Amir were. But before that, it is in order that we produce the gist of Md. Amir Khan's statement made under 313 CrPC:

Md. Amir's Statement under 313 CrPC:

One Gupta ji has met him at Pakistan embassy in New Delhi when he had gone there to procure a visa to visit his married sister in Pakistan. Gupta ji had asked the accused to collect some important

information during his visit but he could not collect the requisite information and upon his return, Gupta ji threatened to involve him in a false case.

On 20th February 1998, when he was going on the Bahadurgarh Road, he was taken by some persons in a Gypsy vehicle to some office where Gupta ji, ACP Ravi Shankar, Inspector Rajender Bhatia, Inspector Rakesh Dixit, and Inspector Subhash Tandon were present. He was tortured by the police officials there and they obtained his signature on blank papers and misused the same by converting those papers into his false disclosure statements and had implicated him in various cases. The officials at CIA Staff Rohtak had also forcibly obtained his signatures on several blank papers.

1. *State Versus Md. Amir Khan*

FIR No.: 790/1996

Police Station: City, Sonepat.

Under Sections: 307, 120B IPC; Sections 3 & 5 of Explosive Substances Act

Sessions Case No.: 51 of 1998/2004

Date of Judgement: 16th March 2006

Judge: A. K. Bimal, Additional Sessions Judge, Sonepat

On the said date (28th December 1996), there were two blasts in Sonepat. The first at Baba Cinema, and another at Gulshan Sweet Corner, Sonepat Market.

It was not any investigation that led the police to Amir. It was a disclosure made in FIR No. 49/98 dated 27th February 1998 pending in Inter-state Crime Cell, Delhi Police, that connected Amir to these two blasts. This was the pattern in all the cases. What was also uniform in all cases was that none of the prosecution witnesses (not belonging to the police, i.e. Public Witness, PW) attested to having seen Amir planting the bomb.

Public Witnesses [PW] did not Support the Prosecution Story:

Jyoti Batra (PW3) who suffered injury in the blast frankly admitted that "she does not know as to who triggered the blast. It could be cracker blasts also." Gulshan Kumar (PW7) was declared hostile when he denied his initial statement. He deposed in the Court that he had not seen Amir Khan being brought by police and pin pointing the place where he had allegedly planted the bomb. Similarly, Prem Singh (PW9) was also declared hostile when he denied that he had seen Amir Khan pinpointing to the cinema hall in his presence.

Chandra Bhan (PW17) did not support the prosecution version in any manner, and in fact denied his previous statement.

SI Ramjit Singh (PW19) had submitted that accused Amir Khan identified the persons from whom he got the container grilled and also verified the shop from which 25 cylinders of *degchun* had been bought, but in the cross-examination he admitted that he did not join the investigation at all.

Similarly, Inspector Rajender Bhatia, IO (Investigating Officer) Delhi, submitted that the accused made a disclosure statement in his presence. But in the cross examination, he admitted that the case property had not been produced in the court on that day.

The Court also noted that a co-accused in the same case, Md. Alam (whom Amir never met and whose trial was conducted independently), was acquitted on 5th September 2002 by the Additional Sessions judge, Sonepat, RK Bishnoi.

The Judge had observed: "Simply the disclosure statement of the accused is of no use to the prosecution but the same is hit by Section 27 of the Indian Evidence Act. The prosecution has not been able to prove its case."

2. *State Versus Md. Amir Khan*

FIR No.: 70
Police Station: City, Rohtak
Under Sections: 4,5 and 7 of Explosives Act; 307 IPC
Sessions Case No.: 25 of 2006/2009
Date of Judgement: 14th March 2011

Judge: Ms. Meenkashi Mehta, Additional Sessions Judge, Rohtak

On 22nd January 1997, there was a blast at the new vegetable market in Rohtak at 5.45 pm.

Further investigations were carried out and during the investigation, it was established that the accused named above, .i.e. Md. Amir Khan had committed an offence. Thirty six (36) witnesses were examined by the prosecution, mainly policemen, injured and doctors.

While many prosecution witnesses testified to having suffered injuries in the blast, none of them deposed that they had seen the accused planting the bomb that caused those injuries. Even the complainant, whose statement formed the basis of the FIR, categorically stated that an unknown and unidentified person had hidden the explosives in the heap of vegetables causing the blast. Again, the medical evidence provided by the various doctors was found to be merely corroborative in nature and did not in any way establish the guilt of the accused.

The depositions of most of the policemen were of technical and formal nature, dealing with collection of soil, iron scarps from the site etc, and not connected with the accused.

The crucial testimonies were of Inspector Subhash Tandon (PW 12), and Inspector Rajender Bhatia (PW 30), both of Delhi Police, who deposed about the accused's disclosure statement and the recovery of the articles at his instance from Pilkhua**.** The Court felt it "pertinent to mention...that the only independent witness as allegedly joined during the aforesaid proceedings in the above said

case, i.e., PW Chander Bhan" was declared hostile when he refused to go along with the prosecution story. Moreover, the allegedly recovered articles were never produced in the Court.

Further, the Court held that since no recoveries were effected from the accused in this case, the disclosure statement in this case did not mean much. The police claim that the accused had himself pointed out and demarcated those areas where the bomb had been planted could not be relied upon as no witness from the public was joined in the demarcation—despite the fact that vegetable market is a crowded public place.

3. *State Versus Md. Amir Khan*

FIR No.: 71
Police Station: City, Rohtak
Under Sections: 4,5,7 of Explosive Substances Act; 307 IPC
Sessions Case No.: 18/2010
Date of Judgement: 9th January 2012

Judge: Kamal Kant, Additional Sessions Judge, Rohtak

On 22nd January 1997, around 6.00 pm, Ram Awadh's rickshaw was hired by a person from Durga Bhawan Mandir up to the Railway station. The customer asked Ram Awadh to go via the Quila Road as he had to purchase some material from there. He got off the rickshaw leaving his bag on the pretext of buying something at Quila Road. About five minutes later, there was an explosion.

In the course of the investigation, it came to the notice of the IO that the accused was arrested in FIR 49/98 dated 27th February 1998 in Police Station Railway Main, Delhi, and accordingly the transit remand was taken on 24th April 1998 and Md. Amir was produced before the court in Rohtak on 25th April 1998 and arrested the subsequent day in this case. After that however, the police failed to produce him in the court on repeated dates, which led to the Court declaring him a 'proclaimed offender'—despite Amir being in the custody of the police!! Amir was next produced in court almost two

years later on 25th March 2010 and faced trial since then.

The Court held a view similar to the Additional Sessions Judge, who acquitted Amir in the first case against him in Rohtak. Lack of any credible evidence to link him to the crime led to Amir being acquitted. It might be mentioned that the Court noted that the complainant, the rickshaw puller, Ram Awadh was declared untraceable and never examined; similarly, several other key material witnesses were not examined by the prosecution, even when they had the opportunity. Indeed, the Court pointed out that only two independent/ injured witnesses have been examined by the prosecution. The Court, hence concluded that the prosecution had "miserably failed to prove its case…"

4. *State Versus Md. Amir Khan & Md. Shakil*

FIR No.: 117/97
Police Station: Roop Nagar, Delhi.
Under Sections: 307/435 IPC ; Section 3 of Explosive Substances Act
Sessions Case No.: 111/98
Date of Judgement: 30th March 2001

Judge: M.S. Sabherwal, Additional Sessions Judge, Delhi

On 25th February 1997 at about 7.00 pm, an explosion took place in a Blue Line bus (No. DL 1P-3425) near the bus stop of Amba cinema, Delhi. SI Dagar of Roop Nagar P.S. took the statement of the driver of the bus, Kishore Raj. The statement was simply that the bus started from ISBT at 6.30 pm and reached Amba Cinema at 7.00 pm, when there was an explosion injuring Md. Harun and Hoshyar Singh. The investigation was taken over by Inspector Hari Ram Malik. On 10th March 1998, Inspector Hari Ram received a message that the accused persons Md. Amir Khan and Md. Shakil were arrested in case FIR No. 49/98 dated 27th February 1998, Police Station Railway Main, Delhi, where they made the disclosure regarding their involvement in this case. Subsequently, a chargesheet was filed against the two. While Md. Shakil was

discharged vide order date 17th April 1999, Md. Amir Khan was charged under sections 307 and 435 IPC and Section 3 of Explosive Substances Act.

In this case thirty two (32) witnesses were examined by the prosecution in its support. Neither the driver, nor any of the other passengers, deposing for the prosecution, testified to seeing the person who had planted the bomb on the bus. The only person who testified in favour of the prosecution story was Md. Harun, one of the injured. He deposed that he has seen the accused in the bus carrying a *thaila* (bag) in which the box containing bomb was kept. The accused had left the bag behind and minutes later an explosion occurred. He also deposed that he went to the police station to identify the accused as the person who had planted the bomb in the bus.

However, Md. Harun's testimony collapsed in the course of the cross examination. First, he admitted that he had not seen the *dibba* (box) in the bag but only guessed that the bag contained a *dibba*. He could not remember the colour or the material of the bag. He also admitted that the boy carrying the bag left with his bag—and in fact did not leave the bag behind. But most important of all, he was interrogated and shown the accused in the police station only one and a half years after the incident, as he had left for his village immediately after the blast, returning only a year and a half later.

The court noted: "The very fact that his statement was recorded after such a long period and he has given the description of the accused only after seeing him in the police station, creates doubt, whether he has seen the accused Amir Khan placing the *thela* in the bus."

5. *State Versus Md. Amir Khan & Md. Shakil*

Sessions Case No.: 116/98
FIR No.: 137/97
Police Station: Subzi Mandi, Delhi.
Under Sections: 307/435 IPC; Section 3 of the Explosive

Substances Act.
Date of Judgement: 15th December 2000

Judge: M.S. Sabherwal, Additional Sessions Judge, Delhi

According to the prosecution, on 25th February 1997, at about 7.15 pm, the accused planted a bomb at Shop No. T-85, Murliwala Kunwa, Ghantaghar, Delhi. The bomb exploded causing injuries to several people. The initial investigation was done by SI Ishwar Singh of the Subzi Mandi police station and subsequently taken over by Inspector Hari Ram Malik, of the Special Cell, North District. Malik arrested Amir Khan in this case on 17th April 1998.

As in the other case of the same date, Md. Shakil was discharged and trial was instituted against Amir.

In support of its contention, the prosecution examined thirty eight (38) witnesses, including those who had sustained injuries.

Acquitting Md. Amir, the court remarked: "A perusal of the testimonies of these witnesses reveals that none of them have supported the prosecution version and they have even not identified the accused and there is absolutely no evidence which could prove the involvement of the accused Amir Khan in the commission of the offences against him."

6. *State Versus Md. Amir Khan*

FIR No.: 249/97
Police Station: Sadar Bazar, Delhi
Under Sections: 3 of Explosive Substances Act; 435/307 IPC
Sessions Case No.: 95/98
Date of Judgement: 15th February 2001

Judge: M.S. Sabherwal, Additional Sessions Judge, Delhi

An explosion took place outside Shop No. 6049, Gali Matke Wali, Chawri Bazar, Delhi, at about 1.20 pm. SI B.D Joshi of P.S. Sadar Bazar proceeded to the spot and recorded the statement of one

Ranjit Singh who worked in Shop No. 6050 selling *rajma* rice. He stated that at about 1.20 pm, a bag lying on the bench near the shop exploded causing injuries to his customers. During the course of the investigation, Md. Amir and Md. Shakil were arrested. Shakeel was discharged while the trial commenced against Amir. In support of its contention, the prosecution examined forty (40) witnesses including the complainant and the injured persons.

The Court noted that the statement of the accused *u/s* 313 CrPC had not been recorded as there was no incriminating evidence against him. Moreover, "the evidence on record reveals that there is absolutely no incriminating evidence against the accused…and even the complainant and the injured persons have not stated anything against him. None of these persons have identified the accused. There is absolutely no evidence to show that he bomb which exploded on 20/6/97 in Gali Matke Wali…was planted by the accused Amir Khan."

7. *State Versus Md. Amir Khan, & Anr*

FIR No.: 262/97
Police Station: Chandni Chowk, Delhi
Under Sections: 3 of Explosive Substances Act; 120B IPC
Sessions Case No.: 11/98
Date of Judgement: 18th January 2001

Judge: M.S. Sabherwal, Additional Sessions Judge, Delhi

On 20th June 1997, at about 2.30 pm, an explosion took place in front of Shop No. 5648, Nai Sarak, Delhi. A case was registered on the basis of the statement of the owner of the shop, the police registered a case in the Chandni Chowk P.S. Investigation of this case was subsequently shifted to Crime Branch, North district and the accused were arrested.

In support of its contention, twenty four (24) witnesses were examined by the prosecution.

The Court noted that the statement of the accused persons have not been recorded "as there is absolutely no incriminating evidence against them." Further, "A perusal of the statements of the witnesses examined by the prosecution shows that they have not stated anything against accused persons, which could connect them with the commission of the offences alleged against them. All the public witnesses have not supported the version of the prosecution and none of them have identified any of the accused persons."

Importantly, the public witness, Chander Bhan deposed that he had not seen the accused persons earlier. During the cross examination, he steadfastly "denied the suggestion that the accused had led the police party to his shop at Pilkhua and pointed out the house of Abdul Sattar Teli. …The witness stated that he had not seen the accused on the night intervening 27th and 28th February 1998 and stated that he had seen the accused persons only during the trial in the court. He also stated that he had never accompanied the police party at Pilkhua."

8. *State Versus Md. Amir Khan*

FIR No.: 191/97
Police Station: Lahori Gate, Delhi.
Under Sections: 435/436 IPC
Sessions Case No.: 100/98
Date of Judgement: 30th November 2000

Judge: Additional Sessions Judge, Shri M.S. Sabherwal, Delhi

On 20th June 1997, at about 2.20 pm, Abid Hussain, owner of Shop No. 468, Ballimaran, where he sold lottery tickets, saw sparks and smoke emanating from a small box placed in his show case. He threw the *dibba* (box) on the floor. The IO of the case found explosives in the *dibba*. The prosecution's case is that the accused (Md. Amir) arrested in another case disclosed his guilt in this case. This led to his arrest and interrogation in this case as well.

Twenty five witnesses were examined in all. "None of the public witnesses have supported the prosecution version and the accused was not identified by any one of them….There is absolutely no evidence on the record to show that the accused Amir Khan had placed any explosive substance in the showcase of Md. Abid Hussain."

9. *State Versus Md. Amir Khan*

FIR No.: 751/97
Police Station: Kotwali, Delhi
Under Sections: 307/435 IPC ; Section 3 of Explosive Substances Act
Sessions Case No.: 108/98
Date of Judgement: 10th May 2001

Judge: M.S. Sabherwal, Additional Sessions Judge, Delhi

On 14th July 1997 at about 8.15 pm, an explosion took place in a public transport bus (No. DL-1P-3093) at Red Fort bus stand, injuring several passengers. In a repeat of other cases, Md. Amir was implicated in this on the basis of his disclosure statement and again, none of the public witnesses— those who were travelling on the ill-fated bus that day—identified Amir as having travelled on the bus. All of them deposed that they were seeing him for the first time in the court. The remaining witnesses were police officials and their depositions were of a formal nature, not pointing anything incriminating against the accused.

10. *State Versus Md. Amir Khan*

FIR No.: 752/97
Police Station: Kotwali, Delhi.
Under Sections: 307/435 IPC ; Section 3 of Explosive Substances Act
Sessions Case No.: 109/98
Date of Judgement: 27th April 2001

Judge: M.S. Sabherwal, Additional Sessions Judge, Delhi

At about 8.30 pm, SI Vijay Singh Chandel of P.S. Kotwali received information that a bomb had exploded minutes ago on a bus (No. DL 1P-7655) on Route No. 839, while crossing Kauriya Bridge. The investigation of the case was transferred to Inspector Krishan Kumar, who subsequently arrested the accused on 23rd September 1998, who following his disclosure statement pointed out the shops from where he had allegedly purchased magnesium powder and other chemicals etc.

The prosecution examined twenty (23) witnesses in all. Statement of the accused was recorded under section 313 wherein he denied that he was guilty and stated that he was being framed.

None of the public witnesses testified to recognizing the accused.

11. *State Versus Md. Amir Khan*

FIR No.: 379/97
Police Station: Sadar Bazar, Delhi
Under Sections: 307/435 IPC; Sections 3/4 of Explosive Substances Act
Sessions Case No.: 128/98
Date of Judgement: 26th April 2001

Judge: M.S. Sabherwal, Additional Sessions Judge, Delhi

On the said date, between 5.00 and 5.15 pm, there was a sudden explosion near Pahari Dheeraj. Almost simultaneously, another explosion went off in a truck (No. DHL 4700) at Qutub Road. The truck was carrying a tableau for the Maharaja Urgasen Jayanti procession. SI, R.K Rathi, Additional SHO of P.S. Sadar Bazar took over the investigation initially, which was subsequently handed over to the Special Cell Operation branch, Ashok Vihar and investigated by Inspector A.Q. Khan. Khan arrested the accused and the trial started. During the course of the trial, forty three (43) witnesses were examined by the prosecution.

Statement of accused under section 313 CrPC denied all allegations against him and alleged that he was being framed.

None of the public witnesses identified Amir. SI, S. K Rathi, said that when he reached Bara Tuti road upon receiving information about the first blast, he saw from a distance a tableau on a truck. Prasad was being distributed and he saw a boy aged 23/24 years handing over a black polythene to the artists on board the tableau. The blast occurred a few minutes later. He deposed that the accused Amir Khan resembled that boy. On being cross examined however, he conceded that there was a huge crowd that day and it was not possible for him to clearly identify the boy. By his own admission, he did not try to apprehend the person. His testimony was not corroborated by any other public witness.

The Court noted that the testimony of this witness did not inspire confidence and thus disregarded it and acquitted Amir.

12. *State Versus Md. Amir Khan & Md. Shakil*

FIR No.: 260/97

Police Station: GRP, District Ghaziabad

Under Sections: 302, 307, 120B, 121, 121A, 122 IPC; Section 3 of Explosive Substances Act; Section 150 of the Railway Act

Sessions Case No.: 357/2007

Date of Judgement: 18th October 2011

Judge: Sanjeev Yadav, Upar Zila and Sessions Judge, Court Number 7, Ghaziabad

On the said date there was an explosion on Frontier Mail (Train No. 2903) in the coach S-6 a little after it left the Sahibabad railway station. When the train stopped at Ghaziabad railway station, there were two more blasts, one at 8.50 pm and the next at 9.12 pm. Many passengers sustained injuries and two succumbed to their injuries on the next day. On 15th October 1997, the investigation was transferred to CBCID. The CBCID framed charges against Md. Amir, Shakil and one Abdul Karim alias Tunda, who was declared an absconder. Accused Shakil died an unnatural death during the course of the trial.

The prosecution examined twenty nine (29) witnesses in its favour. Amir reiterated that he was being framed after his visit to his sister in Karachi, Pakistan.

Public witness did not support the prosecution:

Sanjay Arora (PW14), a passenger described the sequence of events of the day of the blasts and said that he had not seen anyone planting the bomb as he was asleep, and that he has never given any statement to the police claiming to have identified Amir or anyone else. Likewise, other passengers too did not identify Amir.

Public witness Mahmood Alam (PW9), who was presented in the court as a relative of Tunda, denied that he was related to Tunda, or even that he knew him. He denied the prosecution's suggestion that he had been forced into *Jihad* by Tunda or Shakil, or that he had ever assisted Md. Shakil in making bombs, or even that he had given any statements about these in the presence of a magistrate. In fact, he said that he had been made to sign on blank sheets of paper. He was declared hostile.

Similarly, public witness Mahendra Kumar (PW4), who ran a paint shop denied the prosecution suggestion that Shakil and Amir had purchased potassium chloride from his shop, or that the police had come to his shop with Shakil or Amir on 28nd February 1998, who had identified the shop for the police. Some Delhi police official, whose name he could not recollect, had come alone and got him to sign a paper.

Abdul Sattar (PW6) also refuted the suggestion that he knew Amir or that the police had brought Shakil or Amir when it supposedly raided the factory at Pilkhua. No recoveries were made in his presence.

This clearly contradicted the prosecution claim that the police party had taken Shakil and Amir with them to Pilkhua to identify the factory and shops, and that independent witnesses had been joined in the operation.

Loopholes in the Prosecution's Case:

The police witnesses (of the Delhi police) conceded in the court that they had failed to present the hand grenade and other materials seized from the accused or the factory in the court; they conceded also that they did not attach any public witness at the time of arresting Shakil and Amir, allegedly from the Sadar Bazar Railway Station; they conceded too that the public witness Chandra Bhan had turned hostile. He had explicitly deposed that he was not present when the police claimed to have made the recoveries.

The Court noted that except for the disclosure made by the accused in the presence of the police, the prosecution had no proof against the accused. And as such, his disclosure was hit by Sections 25 and 26 of the Indian Evidence Act 1872 and could not be used against him.

The Court held that the prosecution was only able to establish that bombs had exploded on the Frontier mail on 1st October 1997, but could not in any way establish any link between the explosions and Amir.

13. *State Versus Md. Amir Khan & Md. Shakil*

FIR No.: 951/97
Police Station: Kotwali, Delhi.
Under Sections: 307 IPC; Section 3 of Explosive Substances Act
Sessions Case No.: 115/98
Date of Judgement: 23rd March 2001

Judge: M.S. Sabherwal, Additional Sessions Judge, Delhi

On 10th October 1997, a bomb exploded at Chhata Rail Chowk, Railway Colony, within the jurisdiction of P.S. Kotwali at about 8.00 pm. The investigation was transferred to District Crime Cell, North District and Inspector Hira Lal took over the investigation. He arrested Md. Shakil and Md. Amir and recorded their confessional statement. The case was then transferred to Inspector Subhash Tandon. The evidence on record revealed that none of the

witnesses could identify Amir. PW 1, whose statement had been the basis of lodging the FIR, refuted the suggestion that he had provided any description of a boy who had planted the bomb to the police.

14. *State Versus Md. Amir Khan*

FIR No.: 752/97

Police Station: Darya Ganj, Delhi

Under Sections: 307/120B/34 IPC; Sections 3 & 4(B) of Explosive Substances Act

Sessions Case No.: 137/98

Date of Judgement: 27th July 2001

Judge: M.S. Sabherwal, Additional Sessions Judge, Delhi

On 10th October 1997, at about 7.50 pm, a bomb exploded in a bus (No. DEP-5643, Route No. 302)—plying between ISBT and Khureji Khas—while it was passing near Shakti Sthal on the Ring Road. The investigation was entrusted to Inspector Sardool Singh and in April 1998, md. Shakil and Md. Amir were arrested in the case.

The prosecution examined thirty three (33) witnesses and the weight of the case rested mainly on the testimonies of PWs1, 2 and 3, driver and passengers of the bus. All of them categorically contradicted the prosecution version in their insistence that they did not see anyone planting a bomb in the bus. The shopkeepers who the prosecution alleged had sold the material for bombs to Amir denied this; Chandra Bhan (PW14) denied having been joined in any raid or having witnessed any recoveries from Pilkhua. Most importantly, public witness Abdul Wahid (PW21), who the police said had been forced by Amir to assist in making the bomb, deposed that he was called to the police station where he was made to sign some documents.

Finding no evidence against the accused, the court acquitted Md. Amir.

15. *State Versus Md. Amir Khan*

FIR No.: 405/97
Police Station: Mukherjee Nagar, Delhi.
Under Sections: 302/307/34 IPC; Sections 3 & 4 (B) of Explosive Substances Act
Sessions Case No.: 113/98
Date of Judgement: 26th July 2001

Judge: M.S. Sabherwal, Additional Sessions Judge, Delhi

On 10th October 1997, at about 7.35 pm, a bomb exploded in a bus (Number DL 1P-91n4, Route No. 192) plying between ISBT and Sant Nagar when it reached Kingsway Camp Chowk, Burari Road.

Again, none of the witnesses deposed that they had identified the bomber, nor could they recognize Amir.

16. *State Versus Md. Amir Khan & Md. Shakil*

Sessions Case No.: 120/98
FIR No.: 746/97
Police Station: Saraswati Vihar, Delhi
Under Sections: 302/307 IPC; Section 3 of Explosive Substances Act
Date of Judgement: 17th August 2001

Judge: M.S. Sabherwal, Additional Sessions Judge, Delhi

On the said date, at about 7.40 pm, an explosion took place in Rani Bagh, which left many injured. The IO initially was Inspector Mahender Singh, and then subsequently Inspector Sumer Singh. It was he latter who arrested Md. Shakil and Md. Amir in the case. As many as fifty eight (58) witnesses were examined in the court but again, none of them could link the blast to Amir.

17. *State Versus Amir Khan*

FIR No.: 631/1997

Police Station: Karol Bagh, Delhi

Under Sections: 302/307/436 IPC; Section 3 of the Explosive Substances Act

Sessions Case No.: 104/98

Date of Judgement: 4th August 2006

Judge: Shri R.S. Sodhi & Shri P. K. Bhasin, JJ, High Court of Delhi, Delhi

There was a blast at the popular eating joint, Roshan di Kulfi at about 7.00 in the evening on 26th October 1997. Initial recording of statement and registering of FIR was done by SI Sandeep Gupta of Karol Bagh P.S., and was subsequently shifted to Crime Branch. When Md. Amir Khan was arrested on 27th February 998 in FIR No. 49/98 and interrogated, he disclosed his involvement in the bomb blast. The trial court convicted Amir, relying largely on the testimony of two witnesses who claimed to have seen Amir eating golgappas in the shop seated on the bench under which the bomb exploded. They said that the bomb exploded minutes after Amir left the shop.

The conviction was pronounced on 23rd April 2003. Amir appealed against his conviction in the High Court.

The High Court while assessing the evidence said that there was no material to connect Md. Amir with the explosion. Even the testimony of the two witnesses cited above was taken to the highest, it only proves that Amir was present in the shop, not that he had planted the bomb. "Suspicion, however strong it may be, does not take place of evidence".

Amir's refusal to join the Test Identification Parade (TIP) should not have been inferred against him, the Court advised. Amir was justified in not joining the TIP as his photographs had already been published in the newspapers. The High Court analyzing the testimonies of the fifty six (56) witnesseses, drew the conclusion

that "the prosecution has miserable failed to adduce any evidence to connect the accused-appellant with the charges framed much less prove them."

Thus the High Court set aside the judgment of conviction and pronounced Md. Amir's acquittal.

Questions:

- Given the obvious sparseness of evidence against Amir, should it have taken 14 years for him to emerge from prisons?
- Given also that the disclosures were extracted under duress, should not an enquiry be mooted against the erring officers for lying in court and for fabricating evidence?
- Should not a sincere effort be made to trace Gupta ji who implicated Amir in false cases because he failed to spy for him?

Out of the seventeen (17) cases discussed above, Md. Amir Khan was acquitted in twelve (12) cases, i.e. in almost 70 per cent of them between 30th November 2000 and 17th August 2001; in a span of just about eight months. The rest of the fives cases took inordinate delay and his acquittal in these cases came between 16th March 2006 and 9th January 2012; over a period of more than six years. Surely it seems to tell a fair deal about the ills plaguing policing and criminal justice system and the dire need to take prompt corrective measures.

Case 4

State Versus Khongbantbum Brojen Singh

FIR No.: 93/02

Police Station: Kotla Mubarakpur, New Delhi

Under Sections: 121/ 121-A/212/201/120-B IPC; 3/5/20/21/22 of POTA 12PP Act 10/13 UA (P) Act; 25 Arms Act

Date of Judgement: 12th May 2009

Judge: J. R. Aryan, Additional Sessions Judge, New Delhi

The Prosecution's Story:

Ist week of March 2002:

ACP Rajbir Singh had information from a central intelligence agency that a terrorist belonging to the terrorist organization Peoples' Liberation Army (PLA) of Manipur, namely, Brojen Singh @ Sony, was hiding in Kotla Mubarkpur with his accomplice, Ibotombi Sapan. This information was developed further. A report from Superintendent of Police, CID Imphal was received that Brojen was a known terrorist of PLA/RPF.

15th March 2002:

The ACP had confirmed information that Brojen had acquired arms and ammunition for carrying out subversive activities of PLA, and that both he and his accomplice could be found in house number T 821, Arjun Nagar, Kotla on that day. A team was thus formed to apprehend him. The team reached the house but found it locked. The landlord of the premises, Madan Mohan rented by Brojen and Sapam – was included in the operation.

9.00 pm:

The two returned at 9 pm and upon being identified by the landlord, Madan Mohan, were apprehended. A search revealed a loaded .38 colt revolver tucked in the left waist belt of Brojen's trousers. On the barrel of the gun was engraved, "Colt official police 38-200". A search of the house resulted in the recovery of "incriminating articles" such as a CPU, a laptop, and Rs 30,000 in cash.

The investigation was then handed over to ACP M. D. Mehta on the direction of DCP Special Cell, who also arrived on the spot. On 21st April 2002, ACP L.N. Rao took over the investigation.

Both Brojen and Sapan were charged under POTA.

The Special Cell Team:

ACP Rajbir Singh, Inspector Mohan Chand Sharma, SI Hriday Bhushan, SI Badrish Dutt, SI Sharad Kohli, SI Mehtab Singh

POTA review committee:

In May 2005, the POTA Review Committee chaired by Justice Usha Mehra held that there was no *prima facie* case against Ibotombi Sapan to prove that he was harbouring a terrorist, the offence he was charged with under section 3(4) of POTA. Sapan, a graduate of Journalism and Mass Communication from the Indira Gandhi National Open University (IGNOU), was the president of the Manipur Students Association between 1997 and 1999.

The government appealed against the POTA Review Committee's decision to discharge Sapan but the POTA Court at Patiala House rejected the plea.

The Case against K. Brojen Singh:

The CPU and Laptop:

The CPU and Laptop recovered in the alleged raid were examined at the Computer Forensic Division Bureau of Police Research and Development, Hyderabad. This revealed that Brojen was involved in the activities of the PLA, and that he held the post of Chief External Affairs Dept, RPF.

A letter retrieved from the computer read as follows: "we underground families have the stigma of being selfish and work only for their family but the fact is that we were fighting …to set ourselves and motherland free. "

Confession:

The accused expressed their desire to record their confessional statement, which was recorded by DCP Ujjwal Mishra on 23rd April 2002. The prosecution claimed that the confession statement was recorded by the DCP by observing and complying with the procedural safeguards enshrined in Section 32 of POTA. The confession made it evident that Brojen was a PLA insurgent.

Previous Record:

Further investigation revealed that Brojen had been involved in criminal cases in the state of Manipur and the FIR of those cases

was produced before the court.

a) FIR no. 78/93 (dt. 18.09.93, TADA, Arms Act, District Imphal)

b) FIR no. 667/94 U/S 121/ 121-a, UAPA and TADA

How the Case Fell Apart:

Confession:

- In his defence, Brojen said that he had studied up to 10th class in Manipuri medium and was not conversant with Hindi, English or computers.
- Further, his counsel argued that the statement was recorded when Brojen was already in custody for ten days so the accused could not be "considered free of police influence and the confession could not be taken to be a voluntary one."

The disclosure statement recorded at the time of Brojen's supposed arrest on 15th March 2002 by ACP Mehta and the confession recorded by DCP Ujjwal Mishra under Sec 32 of POTA were identical. The Court noted, "the entire statement is word by word including coma and full stop is exactly the same. . . . It appears humanly impossible conduct both for the person making such a confession or the person recording it that entire confessional statement would be exactly the same word by word."

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his PA to re-record the disclosure statement. It concluded that the "testimony of DCP that he observed the safeguards provided in the provision leaves everything to speculation… [and] entire confession purported to have been recorded by him becomes doubtful."

The Seized Computer:

The Court noted several problems in considering the material from the computer as evidence of Brojen's guilt.

a) A one-month delay in sending the seized laptop and computer to the Forensic Laboratory. During the intervening period, the seized items and the seal remained with the police, thus tampering could not be ruled out.

b) The articles received at the Forensic Science Bureau of Police Research and Development, Hyderabad, does not mention the make/model of the computer.

c) The material cited by the police as indicative of Brojen's terrorist affiliations was not found to be incriminating. The court asked how the following could be construed so as to refer to a terrorist organisation: "…to suppress our sentiments, the centre have even stopped paying salaries for 4-5 months to Government employees. Even under such pathetic situation why people are still asleep."

d) Most disturbingly, a file in the computer showed the timing as 6th October 2002; 04:58:17 pm—a time several months after the computer had been seized! Several files annexed as incriminating evidence could be found dated 6th October 2002.

e) The letter retrieved from the computer, addressed to the Chief External Affairs Department (RPF), does not mention any terrorist act. Further, there was no evidence, the Court ruled, that RPF was in fact the PLA, a banned organisation.

The FIRs from Manipur:

The first FIR relating to an incident dated 19th September 1993 when a police party was attacked in which ten police officials died, does not name the accused.

In the second FIR (dated 5th May 1994), though the accused is named, the trial is still pending and Brojen's guilt is far from being established. The FIRs did not provide any "substantive evidence to prove that accused belonged to a terrorist organization".

The Firearm:

The Prosecution argued that a revolver was seized from Brojen. The only independent witness to this seizure was the landlord. The Court held that his testimony could not be taken as independent since he could have been threatened by the police that he would be implicated on charges of harbouring a terrorist. Further, the arm seized was a Colt, not an illegal firearm. Why did the police not try and investigate how and where the accused acquired it?

The Truth:

Brojen used to take part in agitations against AFSPA as a result of which the police booked him –along with other Manipuri youths – in false cases. He had been arrested on 1st May 1994 in FIR No. 63/94 and was released on bail on 21ST January 1995. He was rearrested by police in preventive detention on 22nd May 1995, which he challenged in the High Court. The High Court quashed the PD. Even when the State's appeal in the Supreme Court was dismissed, he continued to languish in the jail. He filed a contempt petition against his continued incarceration by the state authorities. The High Court pronounced the Chief Secretary, Joint Secretary Home and DM, Government of Manipur guilty and sentenced them to two months imprisonment and in addition to which they had to pay a fine. The Supreme Court upheld their conviction but modified their sentence in an appeal.

Brojen further filed a writ petition in Guwahati High Court claiming compensation for his wrongful detention and was

awarded Rs 60,000 by the court (certified copies of the judgments were placed on record). This annoyed the state authorities no end.

In early 2002, he came to Delhi along with his wife and child for treatment for his diabetes and stayed with Ibotombi Sapan in Arjun Nagar. Ibotombi placed before the court certain photographs of the accused, his wife and infant son "appearing in a happy atmosphere at home", which gave credence to Brojen's defence. An official from Apollo Hospital also testified that Brojen was undergoing treatment in the hospital for diabetes.

The defence argued that both were picked up from the Sunday book bazar, Daryaganj, on 10th March 2002 along with the son and wife of the accused Brojen. While the wife and son were let off the same day and handed over to her brother, the accused, along were detained illegally till 15th March 2002 at the Lodhi Road office of the Special Cell. On the 15th March 2002, at about 9.00 pm, Brojen and Sapan were taken to their house in Arjun Nagar, which was searched while they were made to sit in the police vehicle outside. The search of their house took place in their absence. The accused were actually apprehended at the behest of Manipur State police.

Court's Remarks:

The Court concurred with the explanation that since Brojen "had been suspected as a terrorist by State authorities and he had already incurred wrath of authorities in getting their conviction in the contempt of court, the police got him targeted to become a victim of this crime."

The Court acquitted Brojen of all charges.

Case 5

State Versus Hamid Hussain, Md. Shariq, Md.. Iftekhar Ahsan Malik, Maulana Dilawar Khan, Masood Ahmed, Haroon Rashid

FIR No.: 40/50 and 132/04

Police Station: Special Cell, New Delhi

Under Sections: 121/121A/122/123 & 120B IPC, 4/5 Explosive Substances Act, 18/19/20/23 Unlawful Activities (Prevention) Act, &379/411 IPC.

Sessions Case No.: 178/05 & 15/06.

Date of Judgement: 8th January 2010.

Judge: Dharmesh Sharma, ASJ-II, North, Delhi

The Prosecution's Story:

In the first week of February 2005 information was received that the banned terrorist outfit Lashkar-e-Toiba (LeT) had set up a base in Delhi and that a person named Hamid Hussain (R/o Seelampur) was working for LeT in Delhi. It was further gathered that he had been frequently visiting Jammu & Kashmir, both to procure arms, ammunition and explosives as well to receive instructions from the LeT commander.

Accordingly a police team under the supervision of ACP Rajbir Singh was formed to: (i) develop the information (ii) identify Hamid and (iii) locate his whereabouts in the Seelampur area. Towards this end secret sources were deployed and technical surveillance was mounted.

The information thus developed revealed that Hamid Hussain (R/o C-960, Gali no. 20, Jafrabad, Seelampur) taught the Holy Quran in Attarwali Masjid, Welcome, Delhi, and had been contacted by one Md. Shariq (R/o Chohan Bangar, Seelampur) and was actively involved in the affairs of LeT.

Further chain of event(s):

5th March 2005

2.00 pm

On 5th March 2005 at about 2.00 pm secret information was received in the office of the Special Cell, Lodhi Colony, Delhi that at around 4.30 pm (on the same day), Hamid Hussain would be arriving at Mukarba Chowk—on the Delhi-Karnal bypass road—from Jammu & Kashmir. He would be carrying on him a consignment of RDX and that his associate, Md. Shariq would be arriving to receive him on a motor cycle bearing Registration No. HR 13 S 2639.

3.15 – 4.00 pm

This information was recorded in the Daily Dairy and after discussing it with senior police officers, a police team was constituted. The team left the Special Cell's office at Lodhi (Colony)

Road at 3.15 pm and reached Sanjay Gandhi Transport Nagar traffic intersection ("Red Light"), near Mukarba Chowk at about 4 pm.

The team managed to enlist the assistance to two public witnesses: Anil Jain [PW1] and Sanjay Dhaka [Pw22].

4.15 – 4.40 pm

While the deployed police personnel were waiting, at about 4.15 pm, one of the accused, Md. Shariq rode in on a motorcycle (HR 13 S 2639) from the direction of Karnal. He pulled up near the Ravi Viklang STD Booth and stood waiting for someone. About 4.40 pm, the other accused Hamid Hussain, arrived in from the direction of Karnal, in a Tata Sumo.

The two accused spoke to each other and as they were about to leave the place, both of them were overpowered and apprehended by the police team present there.

At the time of being apprehended the accused Hamid Hussain was carrying a blue and green-coloured airbag.

The Special Cell Team:

ACP Rajbir Singh, Inspector Mohan Chand Sharma, Inspector Badrish Dutt, SI Sanjay Dutta, SI Rahul, SI Ramesh Lamba, SI Subhash Vats, SI Rajinder Singh Sehrawat, SI Kailash Bisht, SI Jai Kishan and SI Vinay Tyagi.

Recoveries:

Upon examination, inside the bag of the accused was found a plastic sack (hidden beneath a layer of clothes) covered in black polythene, which had 22 cardboard packets. These packets were found to contain RDX (each packet had RDX weighing about 480 gm).

After taking a sample of explosive material, parcels were prepared and sealed with the seal of 'MCS'. The CFSL form was also filled up.

At this time, investigation was taken over by ACP Rajbir Singh who also reached the spot.

A *rukka* was prepared by Inspector Badrish Dutt [PW19] at the instance of Inspector Mohan Chand Sharma which was sent for registration of FIR against the accused through ASI Vikram Singh [Pw18].

Interrogation of the Accused:

The prosecution claimed that during 'intense' interrogation, the accused revealed that they worked for LeT and the consignment of RDX that they had on them was to be delivered to another LeT operative named Shams @ Parvez Ahmed Khusro who was hiding in Uttam Nagar, along with two Pakistani LeT *fidayin*s, Bilawal and Shahnawaj. A large cache of arms and ammunition was secreted in the Uttam Nagar hideout.

According to the prosecution, **t**he accused also revealed that the *fidayin*s were planning to conduct an attack on Indian Military Academy (IMA) Dehradun, Uttarakhand.

6th March 2005:

Uttam Nagar Encounter:

On 6th March, 2005, acting on the information provided by the accused regarding their other associates, a police team was constituted, which reached Suraj Vihar, Uttam Nagar, Delhi. After the accused had identified the hideout of the *fidayin*s the police team did a reconnaissance of the area and later evacuated and cordoned it off. The prosecution claimed, that sensing police trouble, the holed up militants opened fire and the police responded through counter-fire.

In the ensuing encounter three militants were killed **and** identified as Bilawal @ Md. Shams (24 years; R/o Rawalpindi, Pakistan), Shahnawaj (25 years; R/o Sindh, Pakistan) and Shams @ Parvez (R/o Patna, Bihar)

Recoveries:

From the hide out of the *fidayin* 'militants' killed, the following recoveries were shown to have been made: three AK 56 rifles, six magazines, 450 detonators, 100 kg dynamite, four hand grenades, three bandoliers, one satellite phone and one Maruti Car besides dairies and e-mail IDs of Let Commanders with whom they were in touch .

More Arrests:

Further interrogation of the accused threw up yet more names of accomplices in the IMA attack conspiracy, leading to their arrests:

- Md. Iftekhar Ahsan Malik (arrested 8th march 2005): His name was revealed in the diary of the slain militant, Shams, who had ordered Malik to gather information about IMA and to try and get hold of passes to its parade.
- Maulana Dilawar Khan and Masood Ahmed (arrested on 12th March 2005): They were accused of hiding hand grenades and pistols respectively.
- Haroon Rashid @ Farukh (arrested on13th March 2005): Accused of providing funds for carrying out terrorist activities to the slain militants at the behest of Saleem @ Doctor, who had allegedly inducted all the accused into terrorist activities.

This brought the total number of arrests in this case to six (06): Hamid Hussain, Md. Shariq, Md. Iftekhar Ahsan Malik, Maulana Dilawar Khan, Masood Ahmed, Haroon Rashid.

In order to prove its case in the FIR No: 40/50,P.S Special Cell the prosecution examined altogether thirty witnesses: 10 Public Witnesses; 12 Police Witnesses; 08 Expert/Formal Witnesses.

How the Case Fell Apart:

No Evidence to show links of the accused with Militants:

The entire case was marred by a lack of evidence to corroborate any nexus between the accused Hamid Hussain and Md. Shariq, or

between the accused Iftekhar Ahsan Malik and Haroon Rashid and their connection with the slain 'militants'.

Witnesses turn Hostile:

Public witness Adil [PW3] denied prosecution's claim that he had seen Shams in the company of Hamid Hussain and categorically told the court that he "would not be able to identify" either of them. Deposition of another public witness Raees Raja [PW5] also failed to bring out any association between the killed 'militant' Shams and the accused Hamid Hussain, Md. Shariq or for that matter between Iftkhar Ahsan Malik or Haroon Rashid.

Shoddy Investigation:

The court took cognizance of the fact that in spite of the photographs of the slain 'militants' available with the police, the latter made no attempt "to show the photographs to local residents to verify or substantiate whether the accused persons were at any time seen in the company or residing with the slain militants."

Flimsy Evidence:

All that the prosecution had to show for evidence linking the accused Shariq and Hamid Hussain to the alleged LeT operatives killed in the police encounter were the identification memos of the dead men prepared on the basis of their identification by Shariq and Hamid; and secondly, their own disclosure statements.

In the absence of independent evidence to show any connection between the accused and the slain 'terrorists', the identification memos of those killed could not be relied upon as they were made at the behest of accused Shariq and Hamid Hussain. Similarly, the Court dismissed the prosecution's reliance on the disclosure statements of these two accused. The disclosures were inadmissible evidence and "cannot be read against them particularly when nothing incriminating was recovered" from the search of their houses.

The Court noted that "mere disclosure statement of the accused in

the absence of anything concrete in the nature discussed above or mobile or telephone call records hardly inspires confidence."

Considering the gravity of the offence u/s 120B of the IPC, the court underscored the abject failure of the prosecution to demonstrate concretely that the accused persons were actively in contact with the slain 'militants' to carry out a *fidayin* attack on IMA Dehradun.

The Case that 'never was' against Md. Iftekhar Ahsan Malik:

The prosecution case against Iftekhar Malik was briefly as following:

Iftekhar Malik's name was found in the dairy recovered from the slain 'militant' Shams @ Parvez, which revealed that he was staying in Dehradun. A police party that reached Dehradun on the intervening night of 7-8th March 2005, descended at Wing 3, Barrack 17/A, Prem Nagar, Dehradun, which was the house of one Bhagat Ram Galyani, where the accused was found and apprehended. He was arrested at 1.30 am on 8th March 2005 and later brought to Delhi.

The prosecution claimed that a hand written slip with its copy containing instructions [received from Shams], was recovered which directed him to collect details of the topography of IMA Dehradun and the routine programme of the Academy. He was also to have established local contacts so as to have access to the Academy and to identify possible hide outs..

The prosecution case was that the accused Iftekhar Malik disclosed that he had arranged three passes for the passing out parade which was held in December 2004 and he had given two of these three passes to the slain 'militant' Shams whereas one pass was kept by him.

Incongruities Galore:

- Why was the landlord, Bhagat Ram Gulyani, neither made a public witness nor associated with the interrogation or the alleged search and seizures performed by the police party? Why

were there no other public witness who joined in?

- While the prosecution claimed that the seizure memo (indicating the recovery of an invitation card for the IMA parade) was written by Inspector Kailash Singh Bisht, the latter during cross-examination admitted that he never visited Dehradun. The police diary/case diary confirms this. Confronted with this, no explanation was offered by Inspector Kailash Singh Bisht for how the seizure memo came to be written by him.
- A part from the disclosure statement of the accused there was no independent evidence that the accused was a member of the banned militant outfit LeT. Nor was there anything on record to suggest that he had had any meeting or contact with deceased 'militant' Shams @ Parvez. Most significantly Iftekhar Malik's name did not figure even once in the various disclosure statements made by the other accused.
- The court noted that the recovery of the invitation card of the passing out parade of IMA, Dehradun proved nothing, because:
  - (a) There was no identification mark in the nature of any serial number or the name of the guest who was supposed to have attended the passing out parade,
  - (b) The passing out parade had already been held on 9th& 10th December 2004,
  - (c) Passes for the parade were in effect taken away by the accused from the room of the public witness Sahil Pando 3-4 days after the parade.
- The court reiterated that for the reasons cited above "the recovery of IMA passes …does not lead to the inference that accused Iftekhar Ahsan Malik was involved in a conspiracy to mount a *fidayin* attack on IMA."
- The Court observed that the diary found on the accused also proved nothing against him. The Judge noted:

"The prosecution has failed to bring on record any evidence to suggest that the Quranic inscriptions found written in the dairy—admitted by the accused to be written by him—"in any way incited hatred, violence or called upon him or the Muslim Community to engage in Jihad or attack any military establishment."

- There was a gross discrepancy in seizing and sealing the hand written slip (on which Malik had ostensibly received instructions from militants). The slip was placed in an envelope with the seal of 'BD' but the memo says that it was sealed with the seal of 'SD'. But the evidence proved that neither Inspector Badrish Dutt nor Sanjay Dutt (whose initials BD and SD stood for) ever visited Dehradun in this case. No explanation could be offered on this count.

The Court concurred with the Defence that Malik was made to write the slip under threat and coercion while in police custody.

The Case of Haroon Rashid @Farooq:

Haroon Rashid was alleged to be a financier of LeT activities. This was sought to be proved by the remittances of Rs 49,000 he had sent as Farooq through Western Union Transfer twice in January 2005.

The second piece of 'evidence' was Rashid's emails to his alleged LeT handler Abdul Ajiz. The coded emails revealed, according to the prosecution, Rashid's part in the IMA attack conspiracy.

How the Case Fell Apart:

- While the accused Haroon Rashid admitted that Rs. 49,000 was remitted by him through the Western Union Transfer, the Court observed that "there is no other evidence that the money was ever collected by the slain militants Shams @ Parvez."The Court was inclined to grant credence to Rashid's statement [u/s 313/281 Cr. PC] that he borrowed 2 lakh, including Rs. 1 lakh from his uncle to pursue a course in marine engineering in Singapore and when he realized that he had more money than required, he remitted the surplus to his father through above

transactions.

- The email evidence also fell flat when it was discovered that while the password to his email account was revealed to the police by Rashid on 13th March 2005, the printouts placed before the court were dated 18th March. The Court emphatically said that "manipulation or tempering cannot be ruled out from 13.05.2005 to 18.05.2005. There is offered no explanation as to where that 75 pages of the print outs taken on 13.05.2005 have vanished…These emails bring out no evidence against the accused that he was involved in any conspiracy to fund terrorist activities or to plan an attack on IMA Dehradun".

The court hauled up the prosecution for total failure to put on record any evidence regarding the code words used by the accused to communicate with his alleged Pakistani Let handler and how these were deciphered and what was their import or relevance in this case.

Maulana Dilawar Khan and Masood Ahmed @ Imam Sahib: The Frame up!

The prosecution deposed that on 12th March 2005, a police team led by ACP Rajbir Singh took the accused Hamid Hussain to Welcome Area, Delhi. Hussain led them to house number JB 6/199, where the accused Dilawar Khan was identified while he stood outside his house.

Dilawar Khan led the raiding party to recover a hand grenade. The accused thereupon led the police party to Baghwali Masjid where he identified the other accused Masood Ahmed, who was arrested. The latter's interrogation and disclosure statement led to the recovery of one Chinese pistol with 24 live cartridges wrapped in a polythene.

How the Case Fell Apart:

- No evidence was brought on the record to prove that Dilawar Khan was residing in house number JB 6/199.

- Public witness, Anwar Khan denied the prosecution case that the accused was residing in the said house and produced documents to prove that the house belonged to him.
- The raiding police team (to the Welcome area) made no effort whatsoever to enlist public witnesses while effecting recovery of hand grenade, nor even Anwar Khan "who was available at the alleged time of recovery made a witness to the said recovery"
- Similarly the court questioned the prosecution as to why no effort at all was made to ensure the presence of public witnesses while effecting the alleged recovery of the pistol and cartridges; despite the area being densely populated and public witnesses being then available—admitted by police officers in their cross examination.
- In view of the complete absence of evidence that the accused Maulana Dilawar Khan and Masood Ahmed were in any way involved in conspiracy or preparation to mount a *fidayin* attack on IMA, Dehradun, the alleged recovery of arms and ammunitions becomes all the more a dubious claim on the part of the prosecution.
- Given the wide media coverage of the 'encounter' at Uttam Nagar the court wondered as to why the accused—if involved in any criminal conspiracy—would "have waited till 12th or 13th of May 2005 to keep the incriminating articles in their possession"

Court's Remarks:

Ex facie, the totality of facts and circumstances suggest that there is no case against the accused persons under the said charge. There is not even a mole of evidence against the accused for their engagement in any act of waging war against Government of India.

The ASJ, remarked: "I do not see as to how offence u/s 121A IPC in regard to the conspiracy to overawe or show of criminal force against the Government of India can be brought out." In the

absence of any positive evidence discussed herein before, charge u/s 121, 121A, 122, 123 IPC have not been brought home by the prosecution against the accused persons.

The Truth:

Md. Iftekhar Ahsan Malik was arrested by a Special Team [Delhi Police] team from Dehradun, on the alleged evidence of his name being in the dairy of slain 'militants'. That he was framed is evident from the fact that his landlord was not involved with the search and seizures from his room. Secondly, the embossed initials on the seizure memo were of those police personnel who never were part of the police team to Dehradun.

Haroon Rashid belonged to a family of very moderate means and thus to pursue a course in marine engineering from Singapore he borrowed Rs. 2 lakh from his uncle. On reaching Singapore he realized that such a lot of money was not required and hence he remitted the surplus money to his father.

Maulana Dilwar Khan and Masood Ahmed were arrested merely on the inadmissible disclosure statement of the accused Hamid Hussain.. Clearly the arms and ammunitions were planted on them, as no public witnesses were enlisted despite the area being teeming with people.

Media Trial:

The report of the arrest of the accused was reported in the Times of India as follows: "The two LeT associates who were arrested on Saturday, Mohammad Sariq and Hamid, have said that Delhi-based A Saleem, a doctor, convinced them to work for LeT in lieu of money." ("Cops Looking for Doctor who helped LeT men", TNN, 6th March 2005)

Further, a report (below) passed off police claims as though they were authentic facts.

Assembling terror, block by building block

Sachin Parashar, TNN Mar 20, 2005, 11.01pm IST

NEW DELHI: The German proverb that fear makes the wolf appear bigger is fast proving to be a misnomer in the case of Delh's terror profile. The arrest of two Lashkar-e-Taiba (LeT) militants and gunning down of another three in an encounter on March 5 has unravelled a mind-numbing conspiracy to bring the city to its knees with a series of hard-hitting and devastating terrorist strikes.

[…]

The arrest of a 29-year-old Urdu teacher in a madarsa in the Welcome area of northeast Delhi is a case in point. The accused, Dilawar Khan, who belongs to Cuttack in Orissa and had been living in Delhi for the past 13 years, was described as a liberal Muslim by his friends. Till a chance meeting with Saleem Salar, LeT's main man in the city, changed his life."

And 'Doc Terror' is the source of inspiration for these men. "Saleem was earlier the chief of Harkat-ul-Ansar in UP and he convinced hundreds of men to work for the outfit. He was trying to repeat the same story here," says deputy commissioner of police (Special Cell) Ashok Chand."

http://articles.timesofindia.indiatimes.com/2005-03-20/delhi/27854548_1_karnal-singh-special-cell-intelligence-agencies

Case 6

State Versus Irshad Ahmed Malik

FIR No..: 47/04
Police Station: Special Cell
Under Sections: 121/121A/122/123/120B IPC & 25 Arms Act
Sessions Case No.: 04/2009
Date of Judgement: 8th November 2010

Judge: J. R. Aryan, Additional Sessions Judge, Delhi

The Prosecution's Case:

In the first week of March 2004, the Special Cell received secret information through a central intelligence agency that a Kashmiri youth named Irshad Ahmed Malik, belonging to a militant outfit Lashkar-e-Toiba (LeT), had been making trips to Delhi for collecting funds for LeT. He had been receiving such funds through the hawala transaction mode. Further, he was trying to set up base in Delhi. Resources were deployed to further develop this information.

27th March 2004

3.00 – 4.00 pm

Specific information was received in the office of Special Cell, that Irshad Ahmed Malik would be coming to Delhi and staying in the Rajdhani Guest House, Bhogal, New Delhi. It was also gathered that he was carrying weapons with him.

A police team reached the place and apprehended the accused from there at around 4.00 pm**.** The accused was identified by the informer.

The Special Cell Team:

Inspector Lalit Mohan, Inspector Hirday Bhushan, SI Umesh Barthwal, SI Sanjay Dutt, SI Anil Yadav, ASI Rishi Pal, HC Dinesh, HC Ajit, HC Rakesh, HC Surender and a few constables. [ACP Rajbir Singh later joined the investigation in this case]

Recoveries:

The arrested accused was searched on the spot and the following items were recovered.

- Fire arm pistol .30 bore bearing mark star (tucked in his waist belt)
- Eight rounds of ammunitions (loaded pistol's magazine)
- Rs.2.75 lakhs (all currency in denomination of Rs 500 notes) in a black bag

Further Investigation:

Further investigation was taken up by SI Arvind Kumar who interrogated the accused and recorded his disclosure statement. Based on Malik's disclosure statement, ACP Rajbir Singh recovered a sealed plastic bag containing an AK 56 assault rifle and two magazines containing 30 rounds each from Humayun's Tomb.[1]

Following this, sections of POTA were added against Irshad Malik.

The POTA Fiasco!

A Review Committee, presided over by Justice Ms. Usha Mehra, was constituted under Section 60 of POTA (2002) to examine the attraction of POTA charges by the accused. The Review Committee (vide order dated 13th October 2005), observed that invocation of POTA in the facts of the case was not justified and charge(s) for offences under POTA was deemed to have been withdrawn in view of the provisions of Section 60(7) of the said Act.

This order was challenged by the State (Criminal Appeal No.607 of 2007) but its appeal was dismissed by the High Court Division Bench of Justices Badar Durrez Ahmed and P.K Bhasin on 26th March 2009.

Thus the accused in this case went to trial only for charges under Arms Act and offences under IPC.

How the Case Fell Apart:

Confession Statement of the Accused: Dismissed!

Malik's confession before the Deputy Commissioner of Police, Special Branch, New Delhi (on 2nd April 2004) was touted us unassailable proof of his guilt. However, with the withdrawal of POTA, the confession recorded under Section 32 of POTA lost its value as evidence.

[1] In this case, ACP Rajbir Singh could not depose or be cross-examined, as he was shot dead allegedly by a property agent on the night of 24th March 2008.

Shaky Witnesses:

a) No independent Witness:

The trial court emphasized that as a rule of prudence when police officials proceed to apprehend a person on information [that someone was to commit a serious crime] efforts should be made to enlist the presence of some independent public person so as to support the prosecution theory and for deposition by police witnesses to become credible. In the absence of such public witness, the testimony of police/official witnesses lack credibility and confidence.

The court noted that between the information received and the actual raid "there was sufficient time opportunity for the police to call some independent public witness to join that team before accused was captured."

b) Suspicious Public witness

The only public witness listed from the side of prosecution was one Ajab Singh. The police claimed he had been enlisted to join the raid party as he was in the vicinity buying some goods. However, the particulars of the said public witness were insufficient. He was simply recorded as: Ajab Singh, s/o Bhagmal, resident of Kotla Mubarakpur. On top of this the police reported that he could not be examined in Court as he was already dead. This led the court to ask

> "What kind of sanctity can be assigned to such a witness when rule of prudence requires a public witness to be joined should be respectable of the locality or a public witness whose credibility could be found to be above board. Joining a person as a public witness only that person happens to pass through may not satisfy the requirement of some 'independent person' joined by the police to support its case."

c) Attempt to Avoid Independent Witnesses

The police claimed to have 'definite' intelligence input about Irshad Malik's stay at Rajdhani Guest House at Bhogal. And yet, quite surprisingly neither before nor after the raid any police officer bothered to contact the Manager or some other senior staff to enquire if the accused had checked in or was likely to check in at the said hotel or had booked any accommodation.

The court wondered, why it should not remark that such enquiries and effort to enlist independent witness "was omitted by the police deliberately".

The court also registered the fact that nobody from the Rajdhani Guest House was made to join the investigation or even questioned later on.

The court wondered, why it should not remark that such enquiries and effort to enlist independent witness "was omitted by the police deliberately".

d) The Silence of Police Witness:

The police witnesses were strangely silent on a number of counts:

- Pw11 SI Umesh Barthwal stated that the seal was handed over to the public witness, Ajab Singh. But during deposition, police witnesses, including the IO was silent as to how the seal was recovered from the now-dead Ajab Singh.
- PW7 HC Dinesh Kumar who was part of the raiding police team to Bhogal was silent about the joining of any public witness in the raiding party. He stated that some persons were asked by the IO to join as witnesses but none came forward.
- The prosecution failed to question HC Dinesh Kumar as to why he was silent about the presence of public witness Ajab Singh.

The Court categorically noted that all this "casts a serious doubt in the prosecution story" and held that in the circumstances it was unsafe to rely upon the testimony of the official witnesses.

Doubt over Recoveries:

a) Tampering of the CFSL Form:

The prosecution case was that once the seizures were made of arms and ammunitions, the raiding police party filled in a CFSL form and seal impression was taken on it. But most surprisingly neither the *mohrar malkhan* – with whom the case property was deposited – speak about any such CFSL form nor did the FSL report mention it, raising reasonable doubt that seizures could have been tampered with.

This doubt is further strengthened by the fact that the material allegedly seized was sent to the FSL one month later, forcing the Court to observe: "These create reasonable doubt in the authenticity of seizure bundles sent to FSL untampered."

b) The Trail of Money:

Rs 2.75 lakh was allegedly recovered from the accused at the time of his arrest. The police had claimed that the money had been received by Malik through a *hawala* transaction from Chandni Chowk. The court wondered as to why "no further investigation in to such an aspect was carried out". The police could not escape by simply saying that the accused did not disclose the source of funds. In the absence of further investigation and any public witness, "the prosecution story becomes doubtful and unacceptable."

c) Recovery of AK56 rifle: Dubious!

The operation of recovering AK 56 from Humayun's Tomb was again shrouded in secrecy. No respectable public witness was joined even though Humayun's Tomb is an open public space. Moreover, the alleged recovery was made on the basis of the accused's disclosure to police and as such could not be believed.

d) Why no recoveries from the Tavi?:

The court noted that when the accused was arrested on 27th March 2004, in his alleged disclosure statement [Ex.PW1/F] he had claimed to have concealed arms and ammunition on the bed of the

river Tavi (Jammu). However, when the accused was taken there, no recovery was effected from there.

The court asked: "How come the police officials then state that accused corrected himself and came out with a renewed disclosure as Ex. PW 1/G".

e) Prosecution's Flip-flop:

The first disclosure statement of the accused mentions an AK 47 hidden in the Tavi riverbed; the second disclosure statement simply mentions an AK rifle and ammunition; and by the time the recovery memo is made out, the rifle is transformed into AK 56!

f) Conflicting Versions:

While the seizure memo says that the AK56 rifle and two loaded magazines were recovered wrapped in a soiled piece of cloth; the police witnesses deposed that "recovery had been effected from a plastic gunny kind of bag". This forced the Court to remark that **"**It all creates doubt in the prosecution story. This part of the prosecution case also cannot be believed and held proved beyond doubt."

g) Public Witness does not Support Prosecution:

During the cross examination public witness Uday Bhan Tiwari did not substantiate the prosecution case:

- Expressed his inability to identify the weapons allegedly recovered by from?
- Accused admitted that he did not remember if any recovery had been effected at all in his presence
- Did not recall if any seal was affixed on seized bundle of weapons or that if the police had ever handed over the seal to him; which the police claimed to have done.

The court remarked**:** "such a testimony renders this part of the prosecution story also incredible."

Court's Remarks:

The Court found the charges U/s 121A, 122 & 123 IPC & 25 Arms Act, unsustainable.

Acquitting the accused of the charge of waging war against the State the court ruled that in any act tantamount to waging war against Government of India, "intention and purpose of the war like operations . . . to strike at the sovereign authority of the Ruler or the Government" is an important criterion and indication of waging such a war.

While passing the verdict, the court cited case of *State vs. Navjot Sandhu AIR 2005 S.C 3820* – where these ingredients of offence under section 121 IPC have been discussed by the Supreme Court – and concluded that "by no stretch of imagination the charge of sedition can be said to have been proved against accused."

The court also acquitted the accused under section 25 Arms Act, as the prosecution miserably failed to prove that alleged arms and ammunitions were recovered from the accused.

The court concluded that the entire operation of the Special Cell had been surreptitious, and blatantly violated all established legal procedures and norms. The court repeatedly stressed that the prosecution story "did not inspire confidence", "lacked credibility", was "suspicious" and "doubtful and unacceptable"..

Appeal also Dismissed:

The Delhi Police filed a criminal leave petition (CRL. L.P. No.208/2011) in the High Court. Judges G.P Mittal and S. Ravindra Bhat dismissed the appeal and upheld the acquittal of the accused. They remarked:

"The investigating agency thus shifted the stand of the accused as per its own convenience to involve him in a serious case like waging war against the Government of India. The Trial Court, therefore, rightly disbelieved the recovery of AK56 and other ammunition in pursuance of the second disclosure statement and consequently acquitted him of the offences under the Arms Act as

also for the offences under Sections 121A, 122 & 123 IPC."

It further observed that:

"It has to be borne in mind that the presumption of innocence, which is attached to every accused, unless proven guilty, is strengthened and re-enforced by an order of acquittal. Thus, the Court interferes with an order of acquittal where the finding of the Trial Court is perverse or there is gross mis-application of law or there are compelling and substantial reasons."

The Truth:

Irshad Ahmed Malik, a native of Doda, (Jammu & Kashmir), ran a provision store since 1993, before his travails began sometime in 1996-97 when he was picked up by the police after a blast took place near his store. He was framed, booked under false charges and thrown into prison. In jail he developed a kidney ailment for which the police did not get him treated. And one day while being transported back after a court hearing he escaped police custody, since his kidney problem had worsened.

After the 'escape' he got himself admitted in a government hospital in Srinagar. Cured of the ailment he became a fugitive on the run for the next four years. Sometime in 2004, he came in contact with a person, on whose advice he took up the clandestine work of the sale and purchase of stolen vehicles.

It was in connection with this illegal work that he came to Delhi on 17-18th March 2004 carrying a sum of 2.80 lakhs, which he had collected through sale of a stolen Santro car in Srinagar. In Delhi, he stayed in a guest house in Paharganj, when between 20th-21st March 2004, he along with two other Kashmiris, was picked up by the police from the Paharganj area. He was brought to the guest house in Paharganj where he was staying and the sum of Rs. 2.80 lakh that he was carrying was seized .The other two Kashmiris, namely Md. Akbar Bhat and Mustaq Ahmed, were implicated in a fake currency case, while Irshad Malik was taken to the Special Cell office at Lodhi Colony.

Subsequently, the Special Cell claimed to have arrested him from a guest house in Bhogal (New Delhi) along with and arms, ammunitions and money. He was falsely implicated and branded as a terrorist, belonging to a militant outfit Lashkar-e-Taiba), who had been making trips to Delhi for collecting funds for LeT, in order to indulge in a future terrorist activity.

During the course of trial the accused Irshad Ahmed Malik, examined a witness in his defence. This witness was an official of the Tis Hazari Court (Delhi), who brought the criminal file record of a case No.47/2004, P.S. Special Cell decided on 18/8/2005, whereby the accused had been convicted in that case FIR 248/2003 police station Sadar Bazar, Delhi.

Media trial:

The media faithfully echoed the police version. Some samples have been reproduced below:

LeT activist held in Delhi

The Hindu, 6th April 2004.

New Delhi, April 5. A member of the banned Lashkar-e-Taiba militant outfit has been arrested by the Special Cell of the Delhi police for allegedly trying to set up a militant base here. The police have recovered arms, ammunitions and cash from him.

Following a tip-off by intelligence agencies, a special cell team caught the suspect, Irshad Ahmed Malik Oda in Jammu and Kashmir, outside a guest house at Bhogal here on March 27. A revolver of foreign make along with eight live cartridges and Rs. 2.75 lakhs in cash were recovered from him.... The police have registered a case under the Prevention of Terrorism Act.

http://www.hindu.com/2004/04/06/stories/2004040604141300.htm

Lashkar militant, scouting for base in Delhi, nabbed

Tribune News Service, New Delhi, April 5, 2004

The Delhi Police Special Cell today claimed to have arrested a Pakistan-trained Lashkar-e-Toiba militant from the Bhogal area in south Delhi. The sleuths also claimed to have recovered a .30 Star Chinese pistol, eight live rounds of ammunition, two fake identity cards in the name of Bashir Ahmed Wani and Tahir Nazir Mir and Rs 2.75 lakh from his possession.

Deputy Commissioner of Police (Special Cell) Ashok Chand said the militant Irshad Ahmed Malik (28), resident of Doda in Kashmir, was arrested following intelligence input that a youth was trying to set up a base in Delhi for terrorist operations....

Irshad was arrested in Bhogal area where he had come to collect hawala money. "He was here to set up base, stockpile arms and ammunition for terrorist activities, besides collecting hawala money," Mr Chand said.... "He also disclosed that he had dumped arms, received from Pakistan, near a river-bed in Jammu, besides some in the backyard of Humayun Tomb in Delhi," said Mr Chand adding that though weapons in Delhi were recovered, those in Jammu could not be traced.

http://www.tribuneindia.com/2004/20040406/ncr1.htm

Attempt to set up LeT base in Delhi foiled; militant nabbed

Outlook, 2nd April 2004

New Delhi, Apr 5 (PTI) Delhi Police today claimed to have foiled an attempt by Lashker-e-Taiba (LeT) to set up a base in the capital with the arrest of a Pakistan-trained militant of the outfit here along with a substantial quantity of arms, ammunition and "hawala money".

Irshad Ahmed Malik, hailing from Doda district of Jammu and Kashmir, was arrested from a guesthouse in Bhogal area of South Delhi by a team of Special Cell after a tip off, Deputy Commissioner of Police (Special

Cell) Ashok Chand told reporters.

One AK rifle, its two magazines, a Chinese-make Star pistol and about 60 rounds of ammunition were recovered from his possession, he said.

Police also claimed to have recovered Rs 2.75 lakh of "hawala money" from him. . . . Malik, who ranks high in the outfit and was in direct contact with Pakistan-based Muzammil alias Abu Mohammad, LeT's in charge of operations in India outside Jammu and Kashmir, was here for past few months, acting as a sleeping agent. . . .

http://news.outlookindia.com/items.aspx?artid=212703

Case 7

State Versus Ayaz Ahmed Shah @ Iqbal

FIR No.: 09/04
Police Station: Special Cell
Under Sections: 121/121-A/122/123 IPC
Sessions Case No.: 133/05
Date of Judgement: 22nd January 2009

Judge: R.K. Jain, Additional Sessions Judge, 01 (North Delhi)

The Prosecution's Story

22nd January 2004

Information was received by Inspector Mohan Chand Sharma of P.S. Special Cell at about 7.00 a.m. that a person named Iqbal had come to Delhi and that he would deliver explosives and hawala money in front of the Welcome metro station. A "raiding party" was formed under the leadership of Inspector Mohan Chand Sharma to apprehend Iqbal.

The Special Cell Team

SI Umesh Barthwal, Inspector Mohan Chand Sharma, Inspector Badrish Dutt, SI Ravinder, SI Dharmender, SI Mehtab, SI Rahul, SI Sushil, SI Jai Kishan, ASI Rishi Pal, ASI Devender, H.C. Satender and Ct. Mohan.

Sequence of events:

8.00 am:

The Special Cell team left its office at 7. 30 a.m. and reached the Welcome metro Station at about 8 a.m. in three private vehicles. The team requested 8-10 passersby to assist the raiding party. All of them refused and left the spot. Inspector Mohan Chand Sharma then deputed members of the raiding party to position themselves in different places around the Metro station.

8.45 am:

A person carrying a black bag on his shoulder came from the direction of Shastri Park and stood in front of the Welcome Metro station. The secret informer, who was with the police, identified this person as Iqbal, the person who was to come to deliver explosives and *hawala* money.

9.30 am:

When no one approached Iqbal, he started to walk back towards Shastri Park. At this moment Inspector Mohan Chand Sharma and other members of the raiding party overpowered Iqbal. The team

then found out that the name of the apprehended person was actually Ayaz Ahmed Shah alias Iqbal. Once again, the Special Cell team requested 4-5 passersby to assist them. All of them refused.

Recoveries:

The black coloured shoulder bag that Iqbal was carrying [it was claimed] contained granulated explosives weighing 3.6 kg and Rs.3,00,000 in cash.

The prosecution claimed that on interrogation, Ayaz Ahmed Shah alias Iqbal told the team that he was a member of a Kashmiri terrorist outfit, the 'Hizb-e-Islami', and that he had come to deliver the explosives and hawala money to a person named Raju as per the instructions of Asif, a resident of Pakistan. It was further claimed that Shah had brought the explosives and hawala money under the directions of the Hizb-e-Islami District Commander of Anantnag to wage war against the Government of India. The Special Cell then booked Shah under the following charges: Of waging war against the Government of India, of collecting arms with such intention and criminal conspiracy under the Indian Penal Code. A case under Section 121/121-A/122/123/120-B IPC read with 4/5 Explosive Substance Act was registered against him.

One of the most glaring contradictions in the prosecution's version of the sequence of events was revealed in the deposition of PW4 Sub Inspector Jai Kishen, who in contradiction to all other witnesses before him, deposed that the secret informer had not disclosed the name of the person who would come to Welcome Metro Station.

The persons who had handed over the explosive and hawala money to the accused could not be traced. The person who Shah was to hand over the explosives and cash to could not be traced either.

How the Case Fell Apart:

Witness Depositions: Loophole after Loophole

The interrogation of PW 11

Inspector Mohan Chand Sharma exposed several contradictions in the prosecution's story. In his cross examination, Inspector Sharma admitted that:

- The secret informer had not given the address of Iqbal in Delhi or in Srinagar
- The police had no information about the quantity of explosives
- The Special Cell had no information from the secret informer about either the description of Iqbal or of the clothes he was to be wearing
- The members of the raiding party being were deployed at a distance of 5, 10, 15 & 20 meters from each other. Inspector Sharma claimed that he was therefore unable to identify the types of arms being carried by the members of his own raiding party.
- He was unaware of whether the family members of the accused were called to the spot or not
- The Special Cell team had no explosive testing kit [while other prosecution witnesses in their depositions claimed that that they had one]. Inspector Sharma was also unaware of the quantity of explosive [contrary to other depositions] kept aside for sampling and could not name the person to whom the sealed samples were handed over.
- He could not tell the Court what was recovered from the 'jamatalashi' of the accused.

There were glaring contradictions in the depositions of the other public witnesses, a few of which are given below:

PW6 Sub Inspector Umesh Barthwal, a member of the raiding operation, who had received the FIR was unable to tell the time of the receipt of the FIR. He was also unable to give the number of the members of the raiding party that were wearing bulletproof jackets. When asked how long the raid/operation took, he similarly expressed his ignorance.

The deposition of PW 3 Sub Inspector Ravinder, also a member of the raiding operation, was along the lines of those of Inspector Sharma and SI Barthwal. He did not know the names of the officials who owned the vehicles that were used in the operation, nor could he say whether any official from the Metro Rail had joined in the raid/operation. He similarly expressed his ignorance about the number of persons in the raiding party and about what was recovered from the accused. The SI did now know if the Investigating officer (IO) had an explosive testing kit in his bag or not. And finally, he could not tell the Court the time when the raiding party finally left the premises.

The cross examination of PW 1**,** ASI Rishi Pal, revealed more loop holes in the police version of the raid: he admitted that the accused had a temporary jhuggi at Shastri Park where they had found his family members.

One of the most glaring contradictions in the prosecution's version of the sequence of events was revealed in the deposition of PW4 Sub Inspector Jai Kishen, who in contradiction to all other witnesses before him, deposed that the secret informer had not disclosed the name of the person who would come to Welcome Metro Station.

Private vehicles used in the Raid:

Mohan Chand Sharma admitted to the Court that the vehicles used in the raid belonged to SI Mehtab, SI Dharmender and Inspector Badrish Dutt and petrol expenses were reimbursed from the secret service fund. Since the vehicles were privately owned, and accordingly there were no entries in the log books of the Special Cell vehicles, it was impossible to verify the prosecution story about the details of the movements of the raiding party on the 22nd January 2004.

Faulty Paperwork and Acquittal:

Ayaz Ahmed Shah was booked under the Explosives Substance Act, which pertains to materials for making any explosive substances. The Explosives Act on the other hand, relates to the

regulation of the manufacture, possession, use and sale of explosives. Both the Acts have separate sanctioning authorities: the Police Commissioner is authorised to sanction cases pertaining to the Explosives Act, while the District Magistrate authorises cases under the Explosive Substances Act. The Special Cell officers, however, got sanctions from the Police Commissioner under the Explosives Act in Shah's case. Moreover, the police had taken the sanction of the government for the prosecution of Shah a day *after* the court took cognizance of the charges against him. The Sessions Court termed the trial 'illegal' and freed Shah of all charges under the Explosives Substance Act.

Mohan Chand Sharma admitted to the Court that the vehicles used in the raid belonged to SI Mehtab, SI Dharmender and Inspector Badrish Dutt and petrol expenses were reimbursed from the secret service fund. Since the vehicles were privately owned, and accordingly there were no entries in the log books of the Special Cell vehicles, it was impossible to verify the prosecution story about the details of the movements of the raiding party on the 22nd January 2004.

Total Lack of Evidence:

The prosecution failed to prove that the accused had collected arms with the intention of waging war against the Government of India. Neither had they been able to prove that Shah had a design and concealed this design to wage war against the Government of India. M.S. Khan, the Defence lawyer, submitted that the prosecution has failed to prove that the accused had conspired to commit a terrorist act or that he was a member of terrorist gang or organization. The prosecution had also failed to prove that the accused belonged to a banned militant organization, the 'Hizb-e-Islami' and that he was an Area Operational Commander. Except for the so called 'disclosure statement' of the accused, there was nothing on record to even suggest that the accused was member of any terrorist outfit.

Court's Remarks:

In his judgment, Additional Sessions Judge R.K. Jain had the following remarks to make about the Special Cell: "it appears that the officials of Special Cell were not vigilant enough in procuring the required sanction and treated the present case as an ordinary case under Arms Act and that has resulted in all the lapses which are apparent on record. In any case, the benefit of all these lapses has to be given tothe accused. Accordingly, I acquit the accused for theoffences, he is charged with".

The Media Trial:

The tone of the few reports of the arrest and the subsequent acquittal of Shah suggested that he was guilty *even after* he was acquittedby the court of law.As in most such cases, the media uncritically reproduced the police version of the arrest, indiscriminately calling Shah a 'terrorist', treating him as guilty before and after the trial. ('Another terrorist goes free', *Midday*, 23-1-2009

http://wtdwtg.mid-day.com/news/2009/jan/230109-Ayaz-Ahmed-Shah-Hizbe-e-Islami-militant-terror-accused-acquitted.htm).

Reporting on the acquittal, the Telegraph called Ayaz an 'outlaw' who 'got away not because he was proved innocent… (but) because the police were dealing with flaws rather than laws'. The report argued that the 'guilty slipped through' because of the Special Cell's ignorance of terror laws and its lack of vigilance regarding legal procedures. Expressing the fear that legal lapses on the part of the Special Cell were likely to result in similar acquittals of 'terror suspects' in at least 40 other similar cases since 2002, the reporter regretted the fact that many of these cases were now in the final stages of the trial.

http://www.telegraphindia.com/1090831/jsp/nation/story_11430394.jsp

Post Acquittal Developments:

On the 14th April 2009, three months after Shah's acquittal, the Delhi Police filed a fresh chargesheet against him, claiming that he was

acquitted on technical grounds and should be prosecuted again. In the charge sheet, the police submitted to the court that they had obtained requisite sanctions in accordance with law for prosecution of the accused and now sought a retrial. Taking cognizance of the chargesheet, Chief Metropolitan Magistrate Kaveri Baweja summoned the accused before the court on May 27 2009. ('Delhi Police file fresh charges against suspected militant', Tuesday, April 14, 2009 8:10:55 PM by IANS)

Case 8

State Versus Saqib Rehman, Bashir Ahmed Shah, Nazir Ahmed Sofi, Hazi Gulam Moinuddin Dar, Abdul Majid Bhat, Abdul Qayoom Khan and Birender Kumar Singh.

FIR No. 146 / 05
Police Station: Kapashera
Under Sections: 307/353/186/489(c)/482/120B/34 IPC & 25/27 Arms Act & 3/5 Explosives Act
Sessions Case No.: 24/10
Date of Judgement: 2nd February 2011

Judge: Virender Bhat, Additional Sessions Judge, Dwarka Courts, New Delhi.

The Prosecution's Story:

27th June 2005:

A secret informer apprised Ravinder Tyagi – then posted as SI in Special Branch of DhaulaKuan – of the nefarious designs of two Kashmiri terrorists, Masood and Zahid. Tyagi asked his source to develop this information further.

1st July 2005:

The secret informer resurfaced with the valuable news that the two terrorists along with two associates, ferrying a huge consignment of arms and ammunition, were headed into Delhi from Jaipur in a blue Tata Indica (HR26S0440).Tyagi led a police party and sat waiting on the national Highway.

2nd July 2005:

In the early hours of the 2nd, the police party spotted a blue Tata Indica coming towards Delhi. After a chase—involving cross fire and hurling of hand grenades, the terrorists were apprehended, and a terrorist attack was successfully averted. Zahid was revealed to be Moinuddin Dar.

How the Case Fell Apart:

The Secret Informer:

The deposition of the star witness Ravinder Tyagi crumbled under the scrutiny of the judge. Tyagi could not reveal to the court his secret informer. Nor could he reply to why he felt no urgency to inform the IB or his seniors about the impending terror strike. The Court firmly held that no one could be convicted on the basis of secret information which could be not be "tested on the touchstone of the cross examination by the accused".

The Army Uniform:

An army combatant uniform was ostensibly seized from the 'terrorists' and traced by the police to a tailor in Gopinath Bazar in Delhi Cantt. The tailor when produced in the court not only

identified Dar but also admitted to selling the uniform to him. The Court noted though that the tailor was not sure whether he sold readymade uniform or if Dar ordered a uniform to measure. It also turned out that the tailor was a stock witness of the police, appearing and giving evidence in many cases on behalf of the police. On closer examination of his testimony, the tailor conceded that he operated his shop from a pavement which left him at the mercy of police and MCD officials, and false testimonies were his way of paying *hafta* to the police. It was in fact he, who had been summoned to the Dhaula Kuan PS where Dar was duly exhibited to him.

Mix up over Vehicles:

According to the police, they visited the tailor in Delhi Cantt in their official vehicle (no. DL1LD1264). However, the log record of the vehicle showed no movement on the said day; the vehicle had remained parked all day at the Police Station. This firmly belied the police story.

The Tata Indica, which was supposedly the vehicle of choice of the alleged terrorists was shown to be stolen and an FIR was produced in this regard. The FIR turned out to be in fact about another car. Moreover, the records showed that the car was registered with the transport authority months after it was supposedly misappropriated—leading the court to conclude that "Tata Indica Car was planted and merely used as a tool to falsely implicate the accused persons in this case."

Palam Airport Sketch:

A sketch of Palam airport was apparently recovered from the pocket of Dar—a point used by the prosecution as proof of the terrorist conspiracy. The court however noted that for the sketch to be kept in the pocket, it would have to be folded more than twice. The fact that there was a single fold longitudinally with no creases suggested that the sketch had been planted as an afterthought. Also, the police upon recovering the sketch made no attempt to either corroborate Dar's handwriting on the sketch, not to inform

the Palam airport authorities about a possible terror attack.

The Press Conference on the Day of the Encounter:

Sub Inspector Mahender Singh deposed in the court that he "took the accused alongwith him from the encounter site to Police Station Kapashera at 10.45 a.m…. from where he reached Hotel Baba Continental, Karol Bagh, at 12 noon, left from there at 1.30 p.m. for the Patiala House Courts." This storyline could not account for the press conference, which the police held at their Headquarters at ITO, to flash their major breakthrough. In court, the prosecution demurred and denied that any press conference had been held. However, the defence was able to produce a photograph of the press conference, published in a Hindi daily.

The Role of Major Sharma:

Major Sharma belonged to Army intelligence and had been posted in Kashmir for six years and subsequently transferred to Delhi as a Lt. Colonel. Dar and another co-accused Abdul Majeed Bhatt had worked for the surrender of several militants before the police in Kashmir. Sharma got the wind of it and sensing the possibility of awards, urged the duo to arrange for surrender before him.[2] Stung by the rejection of his offer, he colluded with Tyagi to implicate these men in this charade of a terror plot—a point not unobserved by the Court:

"They [accused] are totally innocent and have been framed in this case by the aforesaid four police officers in order to achieve theirpersonal gains and/or to settle petty personal scores, be that at

[2] Personal interview with Moinuddin Dar

thebehest of one Major Sharma, whose attempts to persuade accused Gulam Moinuddin Dar to work for him in getting the militants surrendered in Kashmir were spurned by him (Gulam Moinuddin Dar) or to earn undue honours or awards for themselves."

"Viewed from any angle, the encounter alleged to have been taken place on the night intervening between 01.7.05 and 02.7.05, did not take place at all and an absolutely fake encounter has been projected.

The Court's Remarks:

The Court was scathing in its observations on the misconduct of the police officers, and needs to be quoted a length:

"Viewed from any angle, the encounter alleged to have been taken place on the night intervening between 01.7.05 and 02.7.05, did not take place at all and an absolutely fake encounter has been projected. The story of the encounter was carefully scripted in the office of Special Staff, Delhi Police, Dhaula Kuan, by its main author SI Ravinder Tyagi with the assistance of SI Nirakar, SI Charan Singh and SI Mahender Singh. All these four police officers have acted in advancement of their self-interests in total disregard to the demands of their solemn duty. These four police officers whose duty was to protect and safeguard the citizens, have turned persecutors and tormentors.

[…]

These four police officers have brought utter shame and disrepute to the whole Delhi Police Force. In my opinion, there cannot be any more serious or grave crime than a police officer framing an innocent citizen in a false criminal case. Such tendency in the police officers should not be viewed or dealt with lightly but needs to be curbed with a stern hand.

I, therefore, direct the Commissioner of Police, Delhi, to initiate appropriate enquiry against the four police officers SI RavinderTyagi, SI Nirakar, SI Charan Singh and SI Mahender Singh (who by now may have been promoted to the post of

These four police officers have brought utter shame and disrepute to the whole Delhi Police Force. In my opinion, there cannot be any more serious or grave crime than a police officer framing an innocent citizen in a false criminal case. Such tendency in the police officers should not be viewed or dealt with lightly but needs to be curbed with a stern hand.

Inspector) for the misuse and abuse of their powers as a police officer, as detailed herein-above. The enquiry shall be completed within three months from today, and report be submitted to this Court on the next date of hearing.

The SHO, Police Station Kapasahera is also directed to register FIR against the aforesaid four police officers U/s.167 IPC and forward the same to the Addl. Commissioner of Police (South/West) who shall conduct investigation which shall be completed within three months from today and a report be submitted to this Court on the next date of hearing. A copy of the FIR shall be sent to this Court within one month from today."

The Truth:

On 14 June 2005, Moinuddin Dar and Bashir Amed Shah travelled to Delhi from Kashmir in connection with their tea business carrying with them about 4.5 lakh rupees in cash for transactions. As was their custom, the duo stayed in a hotel in Karol Bagh. They befriended two fellow Kashmiris who were booked into a room close to theirs. Two evenings later, when Dar was relaxing in his room and Rehman out with their new friends for dinner at Nizaumddin, there was a knock on the door. Dar found two men at his door, one of them claiming to be Ravinder Tyagi of the Delhi Police Special Branch. The other man was Major Sharma of the Indian Army posted in Kashmir.[3] Dar's nightmare had begun. Over the next couple of days the four Kashmiri men were detained in the hotel by the police, subjected to torture and indignities and forced to sign blank sheets of paper. Slowly, Tyagi and his men turned the

[3] Personal interview with Moinuddin Dar

hotel into their private torture chamber collecting thirteen Kashmiris in its rooms. The men were taken to the Dhaula Kuan Police Station where senior police officers demanded money in lieu of freedom. Nearly two weeks after they were illegally confined in their hotel room, Dar, Bashir and two other men, Saqib Rehman and Nazeer Ahmed Sofi – the last picked up from the Delhi airport when his flight landed from Srinagar on 20th June –were driven to the Police headquarters in ITO. As they got off from the police vehicle, they noted a frenzied media presence—the four were thrust in front of the cameras by a preening Tyagi who claimed to have arrested them after an encounter on the National Highway 8 near the IGI airport. A press photo of a smooth Tyagi and dazed-looking accused, separated only by a row of seized arms and explosives, survived. This public moment of glory was to be one of the key evidences to nail the lie of police claims.

Case 9

State Versus Khurshid Ahmad Bhatt

FIR No.: 122/05

Police Station: Special Cell

Under Sections: 121/121-A/122/ 123/ 120-B of IPC and Section 25 of Arms Act

Date of Judgment: 26th March 2011

Judge: Anuradha Shukla Bhardwaj, Juvenile Justice Board

The Prosecution's Case:

In the second week of August 2005, a complaint was received by SI Rahul Kumar from a central intelligence agency that one Aslam Wani, hailing from J & K, was working as a courier for arms, ammunition, explosives and hawala money, and had set up base in South Delhi. A Special Cell team to develop this information was formed.

26th August 2005:

An informer came to the Special Cell PS and told Inspector Mohan Chand Sharma that Aslam Wani, residing at 89, Kailash Nagar, was on his way to collect a cache of arms and explosives, and would return to his flat in the afternoon.

This information was recorded in the DD and a team equipped with arms and ammunitions was formed and sent off at 10.15 am. It reached Kailash Hills Colony in about 30 minutes. Inspector Sharma unsuccessfully tried to enlist some passersby to join the raiding party.

12. 15 pm:

A figure emerged from a service lane from DAV school side carrying an airbag on his shoulder, and was identified by the secret informer as Aslam Wani. Wani was apprehended and searched. His bag revealed black colour explosive RDX in granulated form and ten electronic detonators, one 9 mm pistol and ten live cartridges. Five live rounds of 9 mm were discovered in the pistol.

The Special Cell Team: Inspector Mohan Chand Sharma (Supervisor), SI Sanjay Dutt, SI Ramesh Lamba, SI Rajender Singh, SI Bhoop Singh, SI Rakesh Malik, SI Kailash Singh, HC Dinesh and Satender.

Disclosures:

Aslam Wani made two disclosures: therein he revealed that in 2003 he came in touch with Shabir Shah, chief of the Democratic Freedom Party when he installed a computer in his house. Through

him, over time, he came in touch with Jaish-e-Mohammad (JeM) whose area commander was Abu Baqar and Khurshid Ahmed Bhatt (a juvenile). Khurshid was also known as Kamran. Wani claimed to have been offered money by Captain Abu Baqar in exchange for collecting a consignment. Wani was in Delhi to collect the consignment of explosives for JeM and cash for Shabir Shah. He said that he had collected Rs 62.96 Lakhs from hawala sources, of which Rs 52.96 Lakhs was due to Shah and the remaining was to be paid to Jaish operatives.

A team of Special Cell officers including Insp. Badrish, SI Dharmender, SI Ramesh Lamba, SI Bhoop Singh were dispatched to Srinagar to investigate the matter further.

21st September 2005/ Kashmir

The team was followed by ACP Sanjeev Yadav and SI Vinay Yadav. They were received at the airport by their colleagues who were already present in the town. They left immediately for Pampore and were met by Inspector Manzoor Ahmad of Pampore PS. The joint party departed for Khandawala chowk at about 4.30 pm and apprehended Khurshid there and carried out a search.

Recoveries:

A huge cache of arms – one .38 pistol, 72 live cartridges, .38 bore and six live hand grenades, one spare magazine of .38 bore pistol – and other incriminating objects such as a belt pouch, a Jaish ID card bearing Khurshid's photo and name, and a rubber stamp of tehsil commander of Jaish-e-Mohammad were seized from him. Bhatt's disclosure was recorded. As per interrogation and disclosure Khurshid Bhatt was involved in criminal and unlawful activities to destabilize the Union of India.

7th November 2005: The seized arms and munitions were sent to CFSL, Lodhi Road.

1st December 2005: The recovered six hand grenades were sent to NSG, Smalkha, Delhi to be defused.

7th September 2006: Khurshid Ahmed Bhatt was found to be a juvenile and shifted to the Juvenile Justice Board.

22nd July 2008: Declared Juvenile.

How the Case Fell Apart:

It was the prosecution's case that while Aslam Wani was arrested on 26th August 2005, his disclosure led them to Khurshid, who was finally apprehended in Pampore, Kashmir on 21st September 2005, one full month later. In the interim, the prosecution witnesses conceded that the newspapers had prominently reported the arrest of Wani. The main accused in the case, Shabbir Shah, while living publicly and freely in Srinagar, was not apprehended while the juvenile was arrested. The prosecution could produce no evidence to demonstrate that Khurshid had conspired with Wani to wage war against the nation.

Procedural Lapses:

- There was no copy of entry about the Srinagar trip in the Daily Diary (DD) of the Special Cell PS.
- No sanction was obtained from any competent authority for the recovery of arms, thus all charges against the juvenile failed.

Recoveries or No Recoveries?

The Defence argued that the recovery shown by the prosecution was tainted as no public person was associated with it. The Prosecution tried to defend the recoveries as valid evidence as it was supposedly effected on the basis of a disclosure made by the co-accused, Aslam Wani. The Defence however pointed out that the co-accused Wani had not made any disclosure about the recovery of possessions, rendering the seizures as null and void.

Aslam Wani's first disclosure does not mention Khurshid's name at all; the second disclosure speaks of hawala money, whereas no money was recovered from Khurshid. The main charge against him was of raising funds for anti-national activities, but no monies were recovered from him. The hawala funds were recovered from

Wani and were to be delivered to Abu Baqar. There was no role for the juvenile Khurshid to play in the entire episode, argued the defence.

Doubtful Story:

The prosecution witnesses told the Court that the joint team left from Pampore Police Station to Khadawala Chowk, a residential area, where the Kashmir police conducted checks of all the passing vehicles for 30 minutes. It was then that they saw young Khurshid Bhatt emerging from the Tral Road side. The Court found the story unsustainable under scrutiny.

First, it was highly unlikely that the joint raiding party could not find any public person on the road despite the locality being a residential area.

Second, while the prosecution claimed that they left Pampore Police Station at 4.30 pm, how could they have, the Court asked, reached the spot, conducted a search for 30 minutes, and yet apprehended Khurshid sometime between 4.30-5:00 pm, as claimed by the prosecution? If they "had departed at police station at 4.30 pm, they would not have reached the spot at 4.30 pm and if the juvenile was apprehended at 4.30 pm, then the checking would not have done for 30 minutes [sic]".

Third, if the Kashmir Police—by the prosecution's admission in police uniforms—were conducting a search operation, the juvenile would not have knowingly, foolishly walked into the search party.

The Court acquitted Khurshid Bhatt of all charges.

Press Reports:

A report in *The Hindu* jettisons the use of 'alleged' in its headline. And in fact, prominently displays the information (without source or credit) that he carried an award of Rs 1 Lakh on his head, a 'fact' not mentioned anywhere in the court records.

Jaish militant held in South Delhi

Staff Reporter, New Delhi

Carried a reward of Rs.1 lakh on his head

NABBED: Khurshid Ahmad Bhat in police custody on Friday. Photo: V. Sudershan

NEW DELHI: An alleged Jaish-e-Mohammad (JeM) area commander of Pulwama has been arrested at Pompore in Jammu and Kashmir by the Special Cell of the Delhi police. A star-mark pistol with 72 live cartridges, a spare magazine and six hand grenades were allegedly seized from his possession.

On August 26, the Special Cell had arrested Aslam Wani, a resident of Srinagar, at Kailash Hills in South Delhi and recovered a consignment of high-explosive RDX, electronic detonators and a pistol from him.

Aslam allegedly disclosed that he worked for Shabbir Ahmed Shah, president of the Democratic Freedom Party of Jammu and Kashmir, and for JeM militants.

Aslam purportedly revealed that he had received Rs. 62.96 Lakhs from three hawala operators at the instance of Mr. Shah and JeM militants. Also, he was supposed to deliver a consignment of arms, explosives and Rs. 10 Lakhs to Khurshid Ahmed Butt (19), the JeM area commander of Pulwama. At Aslam's instance, the police mounted a raid and arrested Khurshid. He carried a

reward of Rs.1 Lakh on his head.

Khurshid allegedly revealed that his father works in the Jammu and Kashmir Armed Police. In 2001, he came in contact with two JeM militants, Kamran and Safdar, at whose instance he underwent training in the handling of arms and ammunition in the Kotgiri forest area of the Kashmir Valley.

The camp was being run by the top JeM militant, Gazi Baba.

Date:24/09/2005
URL:http://www.hindu.com/2005/09/24/stories/2005092420000300.htm

Case 10

State Versus Salman Khurshid Kori and Others

FIR No: 96/06
Police Station: Special Cell
Under Sections: 121/ 121 A/ 122 IPC; 5 Explosive Substances Act and 18 UAPA
Sessions Case No.: 236/1/10,
Date of Judgement: 13th December 2011.

Judge: Raj Kapoor, Additional Sessions Judge, Tees Hazari

The Prosecution's Story:

In October, 2006, the Special Cell of the Delhi Police arrested two alleged LeT operatives, namely Md. Alamgir Hussain and Abdur Razzaq Jiwon, and recovered explosive substances from their possession. FIR no. 75/06 was filed in this regard. Subsequently a team of police personnel was constituted to investigate who actually delivered the explosives to the aforesaid persons. Accordingly, secret sources were deployed.

18/19th December 2006:

Inspector S.K. Giri of the Special Cell received information on the intervening night of 18/19th December 2006 that three LeT operatives from J&K, would be arriving in Delhi early morning around 7.00 am at the bus stand opposite Azad Hind Market, Red Fort. The men would be travelling by bus, carrying a consignment of explosives in order to execute their plan in Delhi. The 'secret' information also confirmed that these were the same men who had escaped the police net during the arrest of Razzak, the LeT operative arrested in October earlier. This information was then put down in writing and senior officers were informed.

5.00 - 7.25 am:

Early morning, a team of police personnel was constituted which departed for the spot in one Rakshak (Registration No.: DL 1CJ 3067), four private vehicles and three private two wheelers. They reached at the spot at about 5.30 am. After reaching there, Inspector Manoj Dixit, tried to enlist some people to join the police team as public witness, but none agreed and all left the place on some pretext or the other. At about 7.25 am, the police team notice the accused persons near the bus stand (mentioned in the secret information). After the informer indentified them, Salman Khurhsid Kori, Abdur Rehman and Md. Akbar Hussian, were apprehended from the spot.

9.15-9.30 am:

At around 9.15 am, ACP Sanjeev Yadav reached the spot and

joined the police team. He interrogated the apprehended men and formally arrested the three accused.

The Special Cell Team:

The police constituted for apprehending the accused constituted the following personnel: Inspector S K. Giri, Inspector Manoj Dixit, SI Rajiv Kakkar, SI Sanjiv, SI Neeraj, SI Virender Tyagi, SI Youdhvir, SI Sushil, SI Uma Shankar, ASI Devinder, ASI Intezar Hussain, ASI Ashok Tyagi, HC Harish, HC Satish, HC Devinder, HC Jaiveer, HC Ramesh Lakra, Ct. Lachhi, Jaiveer, Ct. Puran, Ct. Anil Chaddha, Ct. Anil Dhaka and others.

Recoveries:

Each accused was apprehended carrying a bag, which was searched on the spot by the police team. Explosive sticks, detonators and hand grenades were said to have been recovered.

'Further' Investigation:

According to the prosecution story, subsequent to the arrest of the accused, police teams were dispatched to: J&K, Deoband and Aligarh.

How the Case Fell Apart:

During the cross-examination of the witnesses, the judge noted several inconsistencies, "contradictions and variations", which punched holes in the prosecution story.

No Proof to Show that the Accused Travelled by Bus:

- During cross-examination the prosecution admitted that none of the police/official witnesses had seen the accused persons disembarking from the bus.
- No admissible evidence was put on record to prove that the accused had actually travelled by bus from Jammu & Kashmir to Delhi on the alleged date, and got down from bus.
- The police team did not even care to note down the registration number of the bus, the accused alighted from.

- The police did not engage the conductor of the bus for verification of the accused, nor did it interrogate or record the statement of the conductor.
- No admissible material put on record to prove that the accused persons at any point of time visited or stayed in Jammu & Kashmir.

No Public Witness of Arrest and Recovery:

The prosecution failed to produce a single independent public witness relying only on police or formal witnesses. The prosecution stated that though the police asked about 10-12 people to join the raiding police team but no one agreed. However, the court did not find it convincing and noted the admittance by Inspector S.K Giri – during cross-examination – that in just about 15 minutes, after the apprehension of the accused, a large crowd had gathered at the spot, which included media persons. Why then did the police effect recoveries before the gathering of public at the spot?

The court observed that between the information received and actual raid there was sufficient time and opportunity for the police to call some independent public witness to join that team before accused were captured.

Identity of the Accused was Never Revealed:

The Defence argued that there was absolutely nothing to connect the accused to any terrorist activity or to the two men apprehended in October.

Neither FIR no 75/06 – about the arrest of Alamgir Hussain and Abur Razzak Jiwon, who apparently led to Salman Kori and others – nor the DD of the Special Cell mentioned the names or indicated the descriptions of the three accused. The police had no description of the accused available with them at the point of making arrests. How did the Special cell decide that Salman Kori and two others were terrorists if they, by their own admission, had no clue to their identities?

Further Investigation in the Case:

- According to the disclosure statements of the accused presented by the prosecution, the accused had divulged that they could actually point out the places at Sopore, Pulwama and Hindwara in J&K where terrorist camps were being run. Despite possessing this 'knowledge' 'why did the Special Cell not share this information with the Jammu & Kashmir police?
- The court observed that "no terrorist could be apprehended nor site of the training camp could be identified."
- The prosecution submitted that subsequent to the arrest of the accused, police teams were sent to J&K, Deoband, and Aligarh. But the chargesheet fails to mention that any police team, on any occasion was ever sent out of Delhi for the purpose of investigation of this case. ACP Sanjeev Kumar Yadav (IO) did not place on record any Dairy entry (DD) in this respect. The court thus noted gross inconsistency in this regard.

The court observed that between the information received and actual raid there was sufficient time and opportunity for the police to call some independent public witness to join that team before accused were captured.

- Finally, why was the police investigation utterly silent on whether the accused – supposedly journeying to Delhi from J&K – were ever taken to J&K for further investigation in this case, or to arrest their associates, or to simply to identify places in J&K, where they had stayed?

FIR and Seizure Memos Manipulated?

The handwriting and ink is identical in the seizure memo and the FIR. This indicated that both were written with the same pen by the same person, at the same time. This would be in gross violation of norms as well as the prosecution story as the seizure memo is supposed to have been written out at the sight of recovery while the

The prosecution had all along claimed that according to their secret information the accused were coming to Delhi (from J&K) with explosive material to execute a terror plan. Given the severity of the situation, it was but imperative for the police to inform the bomb disposal squad and also call them to the spot. But no such effort was made and there is nothing on record to underline this. This makes the police version doubtful.

FIR is supposed to have been filed later on at the Special Cell office.

Further Lapses:

- The prosecution had all along claimed that according to their secret information the accused were coming to Delhi (from J&K) with explosive material to execute a terror plan. Given the severity of the situation, it was but imperative for the police to inform the bomb disposal squad and also call them to the spot. But no such effort was made and there is nothing on record to underline this. This makes the police version doubtful.
- The site map also does not give full description, as it does not mention Azad Hind Market at all. The Defence counsel on this basis argued that the recovery proceedings were fabricated.

Court's Remarks:

The Court noted that "the entire case is based on the disclosure statements which are not admissible in evidence and the testimonies of the police officials who are interested witnesses."

The Court ruled that "mere possession of explosive substances cannot tantamount to cause threat to the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India . . . so, the conviction merely on the indicative, to my view will lead miscarriage of justice . . . Besides, non proof and determination of mental intent of each accused to commit offences u/s 121/ 121A/ 122 IPC & 18 Unlawful Activities

Act, again cannot hold group view that mere possession of explosive substances was intended to commit terrorist act.

The Truth:

The Defence argued that all the three accused named in this case were picked up by the police from places and on dates that were far removed from what they showed. While Abdur Rehman was picked up from the Imphal bus stand on 5th May 2006 where he had gone to catch bus to Guwahati; another accused Md. Akbar Hussain was picked up from his house in Imphal on 20th September 2006 and later falsely implicated in this case by the police by concocting a fabricated story. Similarly the accused Salman Khurshid Kori was apprehended on 6th October 2006 and later on likewise implicated in a false case by the police.

The Court noted that "the entire case is based on the disclosure statements which are not admissible in evidence and the testimonies of the police officials who are interested witnesses."

Thus it is clear that each of the accused were picked up by the police from their native places in Imphal and several months before they were actually shown apprehended and arrested from near Red Fort in Delhi. All this while, the accused were in the illegal detention and custody of the Special Cell.

The above specifics get substantiated from the fact that the prosecution could not produce any evidence to prove that accused at any point of time stayed or visited Jammu & Kashmir. Further, the prosecution could put on record no evidence to confirm that the accused had travelled from Jammu & Kashmir by bus on the alleged date and alighted at Red Fort at the alleged time. There was also no evidence of any nature to demonstrate the connection of the accused with any one in Jammu & Kashmir.

Media Trial:

The stories appearing in the media harped on the infiltration of

'Jihadi' groups into Northeast, among Manipuri Muslims. It was touted as a pioneering effort by the Special Cell to crack LeT's network in the Northeast. Interestingly, some of the claims made in press conferences –such as that Khursheed taking PULF leader Noora to Bangladesh for a meeting with LeT militants – were not repeated in the Court.

No newspaper which had splashed stories of this breakthrough bothered to question or re-visit this police claim of terror groups' spreading to the Northeast after these three were acquitted.

LeT militants held

The Times of India | TNN | Dec20, 2006, 02.01am, IST

NEW DELHI: Delhi Police on Tuesday claimed to have arrested three LeT militants who had been assigned the task of executing bomb blasts in the city. While more than 2 kg RDX and detonators were seized from them, what has raised eyebrows is the fact that all three of them belong to Manipur.

Cops said was the first time they unearthed an LeT network in that part of the country. The three were identified as Salman Khurshid Kori (23), Abdur Rehman (24) and Mohammed Akbar Hussain(20). All three belong to Imphal.

[…]

PULF is an Islamic militant outfit which draws its members from the Muslim community from all over Northeast. Its main leaders are based in the Chandel district of Manipur.

http://timesofindia.indiatimes.com//city/delhi/LeT-militants-held/articleshow/856583.cms

LeT presence in North-East alarms security agencies

Indian Express, New Delhi, Wed., Dec., 20 2006.

New Delhi: The arrest of three suspected Lashkar-e-Toiba (LeT) operatives in the Capital has alarmed security agencies. This is the first instance when the outfit's attempt to set up a base in the disturbed Northeast region and forge links with ethnic insurgent groups has come to light. Evidence of other similar groups operating in the region had been established earlier.

The three terrorists - Khurshid, Rehman and Hussein - hail from the Pangal community of Manipur, who are indigenous Muslims in the state. Kori is also linked to the Peoples' United Liberation Front (PULF), an essentially Pangal outfit, but supposedly a weaker group among the 20-odd organisations operating in the state.

Sources dismissed the possibility of LeT spreading wings in Manipur, but said such efforts could be on since it would have several advantages for the Pakistan-based group.

http://www.indianexpress.com/news/let-presence-in-northeast-alarms-security-a/18974/

Case 11

State Versus Maurif Qamar and Md. Irshad Ali

Original FIR No: 10/2006

Police Station: Special Cell

CBI Case No.:RC.3 (S)/2007-SCU.V/SCR-II, CBI/New Delhi

CBI's Case FIR No.:RC.3 (S)/2007/SCU.V/CBI/SCR-II, New Delhi [Dated: 27.07.2007]

Under Sections: 121/ 121A /122/ 123/ 120 B of IPC; 4/5 of Explosive Substance Act &Section 25 of Arms Act.

Submission of Preliminary Enquiry Report by the CBI in the Delhi High Court: 30th May 2007

Date of Passing order by the Delhi High Court for a thorough investigation by the CBI: 4th July 2007

Submission of Police Closure Report by the CBI: 11th November 2008

Background:

In a repetition of the familiar story, the Special Cell of Delhi Police in February 2006 'arrested' two Muslim youth, Maurif Qamar and Md. Irshad Ali and charged them of being terrorists belonging to the Al-Badr outfit. But the judicial pronouncement in the case once again turned out to be highly damaging against the Special Cell.

Investigations by the CBI – to whom the Delhi High Court handed over the case for conducting a Preliminary Enquiry – revealed that both the accused, Maurif Qamar and Irshad Ali were actually police informers who were assigned the task of infiltrating terrorist organizations in Jammu and Kashmir. When they refused to oblige the intelligence agency (IB), both were disappeared. Irshad Ali went missing from his Sultanpuri house on 14th December 2005 and Qamar was abducted from his residence in Bhajanpura on 22nd December. On 28th December, a missing person report was filed by Aqif Qamar, younger brother of Maurif Qamar, alleging that he had been kidnapped. Representations were also sent to the President, Prime Minister and Home Minister seeking directions to Delhi Police to trace Maurif Qamar. Subsequently, on 9th February 2006 the Special Cell sleuths showed the arrest of Ali and Qamar, alleging that they were picked up by the Special Cell from Mukarba Chowk, on G. T. Karnal Road in north Delhi.

As a result of a writ petition filed by Md Kashif Ali (elder brother of Maurif Qamar) the Delhi High Court on 9th May 2006, ordered a preliminary enquiry to be conducted by CBI, Delhi. In its preliminary report filed before the High Court on 30th May 2007, the CBI concluded that if the Special Cell's version failed to answer many questions. It was thus urged that the case be transferred to CBI for a thorough investigation.

The Delhi High Court ordered a thorough and detailed supplementary investigation into the case by the CBI on 4th July 2007. In its Status Report submitted before the court of Justice Reva Khetrapal, the CBI stated that "the arrests and the recoveries do not 'inspire confidence", and asked the court to entrust the investigation of the case to it (the CBI) "for a thorough and

impartial investigation into the matter".

The Prosecution's Story:

The prosecution story was as following:

9th February 2006:

4 - 5.30 pm:

On 9th February 2006 around 4 pm SI Vinay Tygai received 'secret' information that two militants of Al-Badr outfit, namely Maurif Qamar and Md. Irshad Ali would be arriving in Delhi by a J&K State Road Transport Corporation (JKSRTC) bus bearing registration number JK 02Y 0299. It was also revealed that the alleged militants would disembark at Mukarba Chowk, near the G. T. Karnal Road in north Delhi and that they would be carrying on them a huge cache of arms and explosives.

Upon the receipt of this information a police team was constituted to act upon this information. The police team reached Mukarba Chowk around 5.30 pm, where two of its members, namely Inspector Sanjay Dutt and SI, Vinay Tyagi met their (police) informer. They asked about half-a-dozen people to join the raiding police team as witnesses, but all excused themselves. Failing to enlist public witness, the police team, SI Subhash Vats and SI Ravinder Tyagi were asked to become witness of the police team's proceedings. As the police team waited for the accused to arrive, it was divided in two cordons (inner and outer cordon).

In its Status Report submitted before the court of Justice Reva Khetrapal, the CBI stated that "the arrests and the recoveries do not 'inspire confidence", and asked the court to entrust the investigation of the case to it (the CBI) "for a thorough and impartial investigation into the matter".

7.35 pm:

At around 7.35 pm a JKSRTC bus bearing the mentioned registration number arrived at Mukarba Chowk.

As the bus stopped the police informer accompanying the police team identified Maurif Qamar and Md. Irshad Ali, from among the passengers alighting from the bus. When the accused were about to cross the road, they were intercepted by members of the police team and apprehended.

The Special Cell Team:

Inspector Sanjay Dutt, SI Vinay Tyagi, SI Subhash Vats, SI Ravinder Tyagi, SI Rahul Kumar, SI Dalip Kumar, SI Pawan Kumar, ASI Anil Tyagi, ASI Shahjahan, HC Krishna Ram, HC Nagender, HC Rustam, Constables Rajender and Rajiv.

Recoveries:

At the time of being apprehended, both the accused were carrying bags, which was searched on the spot by the police team. The search of Maurif Qamar's bag apparently led to the recovery of a single star mark .30 caliber pistol and eight live cartridges, three detonators and two timers.

The recoveries from the bag of Md. Irshad comprised another star mark pistol and eight live cartridges, a polythene bag containing approximately two kg of black and while oil based explosive material.

Two bus tickets were also allegedly recovered from Md. Irshad Ali the next day.

How the Case Fell Apart:

No Public Witnesses:

- The police team failed to enlist even a single independent public witness to observe the proceedings of the apprehension/arrest of the 'accused' and seizure of arms and ammunitions from them. Their case was that some bystanders were asked to participate in the proceedings, but all excused themselves on one pretext or the other. In a most bizarre manner the police raiding team asked two of its members, namely SI Subash Vats

and SI RavinderTyagi (both of Special Cell) to become witness to proceedings.

Thus, the prosecution could produce only police/formal witnesses. There was not a single Public Witness produced by the prosecution to prop up its case.

- Interestingly investigations by the CBI revealed that on 9th February 2006, the police team that visited Mukarba Chowk (along with the two accused) had contacted two persons: Lalit Kumar and Guddu Kumar Bhagat; a local vendor and a guard. But categorically stated to the CBI that the police team did not ask them to become witnesses for the proceedings of the stage-managed scene of alleged apprehension of the accused and seizure of arms and ammunitions from them.

The Trail of CDR:

During the course of investigation, the CBI obtained and analyzed the Call Detail Records (CDR) of the following: (i) the two accused (Qamar & Ali), (ii) officers of the police team that allegedly conducted the raid leading to the apprehension and arrest of the accused and (iii) officers of the Intelligence Bureau (IB). Revelations from CDR conclusively nailed the lies, concoctions and frame-up indulged in by the Special Cell.

Investigation revealed that at the time of disappearance, Maurif Qamar was using the mobile number 9213232041. CDR of this number on 22nd December 2005, i.e., the day Qamar disappeared, revealed the following:

- Calls were made till 12.10 pm
- This number remained located at Bhajanpura till about 11am
- The number'slocation then shifted to Kashmiri Gate and was static between 11.39 am and 12.10 pm
- Between 11.39 am and 12.10 pm, two calls were made to Qamar's number from PCOs; one from PCO No 39447642, located near Qamar's residence at Bhajanpur, and the other

from PCO No. 39492772, located opposite the exit gate of ISBT, Kashmere Gate

- The identity of the last caller(s) from PCOs, to Qamar's number could not be established
- After 12.10 pm the mobile number 9213232041 was abruptly switched off

The other 'accused' Md. Irshad Ali was using three mobile phones – the CDR of the first number, 9873131845 for the period 1st October 2005 to 31st march 2006 revealed the following incriminating information:

- 36 calls were made to mobile number 9810702001
- This number was in the name of Majid M. Din, an Intelligence Bureau (IB) official
- 14 calls were made to/from a landline number which belonged to IB/MHA (Ministry of Home Affairs)
- Calls were also received from the offices of DCP/ACP of Special Cell, New Delhi
- This mobile number was continuously used between 1st October to 13th December 2005 (a day before Irshad Ali disappeared)
- The last call received on 13th December 2005 at 3.15 pm from a landline number, 011-24106157. This number is registered with Home Affairs, IB. At this time the location of the accused Irshad Ali was Kailash Nagar
- The last text message (SMS) was sent to Majid Din's mobile. Irshad's location at this time was Hotel Maurya
- Thereafter, the number was switched off and revived on on 1st March 2006, i.e. after the arrest of Irshad Ali was shown

The analysis of CDRs between the officers of the Special Cell as well as those of IB and the both the accused conclusively prove that these officials (of IB and Special Cell) for long had been in contact with the two. Secondly, it established the fact that the duo were

actually police informers or worked as 'source' for IB. Thirdly, it shows a close connection between the date and time of the disappearance of the accused and the switching off, of their principal mobile numbers in use.

Further Revelations:

The CBI's investigation further threw up startling facts and raised many questions:

- No record or documentary proof to show that the two accused were members of terrorist outfit Al-Badr
- Some of the Delhi Police and Intelligence Officers stated that indeed the two accused were working for them as 'informers'
- There were no independent witness to the seizure of arms and ammunitions, even thought the arrest and seizures were made in broad daylight at a fairly busy intersection on G.T. Karnal road
- Why were the driver and conductor of the alleged JKSRTC bus (registration number JK 02Y 0299) not examined and their statement recorded?
- Why no searches were conducted at the residence or work places of the two accused?
- The police failed to explain why the mobile phones of the accused were switched off for two months prior to their arrest
- How is it that the two bus tickets of the alleged JKSRTC were not seized on 9th February 2006 (arrest day) during Irshad Ali's personal search? How could the bus tickets be recovered from him next day, i.e. 10th February 2006?

No Further Investigation:

According to the prosecution's story arms and ammunitions recovered from the accused were delivered by Sheikh Pervez and Faiyaz Ahmed Radar, both residents of Batmaloo, Srinagar. However, investigations by the CBI revealed that the Special Cell

officers made no attempt whatsoever to locate and interrogate the two alleged arms suppliers. The police made no efforts to trace how the weapons reached the accused. Instead, what they did was to simply obtain Non-Bailable Warrants (NBWs) from a court and send it to SSP, Srinagar for execution. These NBWs could not executed/served and were returned due to incorrect or non-existent addresses.

Further, since the accused were allegedly coming from Jammu &Kashmir, why were they not taken there to identify and arrest their associates or those who supplied arms to them?

However, when the police team eventually did go to J&K for the ostensible purpose of conducting an investigation—this was at a much later date on 22nd June 2006.

- This was about four-and-half months after the alleged arrest of the accused
- A month and a half after the filing of the chargesheet on 6th May 2006
- A month and a half after the handing of the case to CBI on 9th May 2006.

Even in the chargesheet filed by the police, it does not reveal the purpose and time, when the two accused had allegedly gone to J&K.

The Truth:

Both the accused named in this case, Maurif Qamar and Md. Irshad Ali, were shown arrested by the police from a place and on a date that were far removed from the date and place from where they were actually picked up or rather kidnapped by the Special Cell personnel in Delhi, in December 2005.

Maurif Qamar:

He arrived in Delhi in the year 2000 and started with a business of manufacturing photo album boxes, at Mahavir Enclave (near Palam village). He moved localities before he shifted to

Bhajanpura, where he was residing at the time of being picked up by the police. He knew co-accused Md. Irshad Ali from the time they studied together in a Madarsa in their native village. It was Irshad who introduced Maurif to personnel of Special Cell sometimes in 2003-04, assuring him that their close association with the police would be helpful for them. Later Maurif Qamar came in contact with Inspector Lalit Mohan Negi of Special Cell and other officials of Delhi Police. He worked as an informer to Inspector Hriday Bhushan of Special Cell and was in regular contact with one Khalid @Majid M. Din of Intelligence Bureau (IB).

On 22nd December 2005, at around 11 am, Maurif left his workshop in Bhajanpura to buy some raw materials for his workshop. However, he did not return home that night. The following day his employees, Vinod and Ganesh informed his brother Aqif Qamar. For the next few days Aqif made enquiries with various acquaintances about his brother. Failing to know the whereabouts of Maurif, on 28th December, his brother Aqif lodged a Missing Person Report at PS Bhajanpura. When his brother still remained untraceable, he sent telegrams to the President, Prime Minister and Home Minister of India and also to the Commissioner of Police (CP), Delhi and Lt. Governor, Delhi on 7th January 2006. He later sent a reminder telegram to all of them on 10th January 2006. The President's Secretariat, the PMO and the Home Minister's office respectively forwarded the telegram to the CP, Delhi for taking necessary action. It was only after this that the Delhi Police informed the President's Secretariat that Maurif Qamar had been arrested by the Special Cell on 9th February 2006 from Mukarba Chowk, Delhi.

Md. Irshad Ali:

Originally a resident of village Paigambarpur, District Darbhanga, Irshad had been living at Mubarakpur, Nangloi, Delhi. Irshad had been plying three-wheeler in Delhi for the past 6-7 years before he went missing.

Md. Irshad Ali came in contact with Special Cell officials during his

frequent visit to Tihar Jail to meet his brother Naushad Ali. In the year 2000 he was picked up by the officers of an intelligence agency but soon released. Since then he began working for IB officials for which he was paid a lump sum amount from time to time. The IB officers Irshad was in regular touch with included Khalid@ Majid M. Din and Aftab @ Syed Arif Haider. Later he started to work for Special Cell as well.

A day prior to his disappearance, Md Irshad Ali had a heated argument with Majid Din over telephone regarding some matter. On 12th December 2005, Majid Din called Irshad on the latter's mobile and asked him to come and collect his due payment as a 'source'. However, on that day when Irshad did not come back, his wife Shabana called up Majid on his mobile to know the whereabouts of her husband. Majid denied that Irshad ever met him on that day. Shabana later told about the incident to her father-in-law, Md. Yunus, who filed a Missing Person Report on 24th December 2005 at P.S Sultanpuri, Delhi. In this regard a reminder complaint was lodged by him on 4th January 2006, where he specifically stated that on 14thDecember 2005 around 11am some unknown persons had taken away his son, Md. Irshad Ali from his house, informing him that he would be sent back in a couple of hours. However, Irshad did not return thereafter.

The CBI further recommended "legal action against SIs Vinay Tyagi, Subhash Vats and RavinderTyagi … for commission of offences u/s 120-B r/w 193, 195 and substantive Offences thereof as per provisions of Section 195(1) (b) (i) Cr. P.C".

Md. Irshad's family finally came to know about his whereabouts on 10th February 2006, through media reports, when the Special Cell of Delhi Police claimed to have nabbed him along with Maurif Qamar, as 'dreaded militants' of Al-Badr outfit trying to sneak into Delhi to carry out certain terror acts.

Postscript: Indictment of Special Cell officers

CBI's investigations revealed that both the accused after being picked up by the police in December 2005 were "thereafter kept in illegal detention" till 9th February 2006 when they were shown arrested as alleged terrorists. The CBI observed that on 9thFebruary 2006, the recovery and seizure of arms and ammunitions from Maurif Qamar and Md. Irshad Ali by SI Vinay Tyagi and claimed to have been witnessed and SI Subhash Vats and Ravinder Tyagi, "is false and that false evidence/record has been fabricated to implicate Irshad Ali and Muarif Qamar for an oblique motive."

The CBI's Closure Report submitted in the court of the Additional Session Judge, S. S. Mohi on 11 November 2008 categorically stated that far from being Al-Badr terrorists as alleged by the Special Cell, the accused were innocent men, framed and falsely implicated in the entire case by the Special Cell, which had planted fabricated evidence on these men.

These startling revelations brought into open the way in which such 'special' security agencies operate: kidnapping, framing innocents, planting pistols and explosives, and justifying their high-handedness in the name of fighting 'terror'.

The CBI further recommended "legal action against SIs Vinay Tyagi, Subhash Vats and Ravinder Tyagi … for commission of offences u/s 120-B r/w 193, 195 and substantive Offences thereof as per provisions of Section 195(1) (b) (i) Cr. P. C".

In short, the CBI recommended them to be prosecuted for fabricating evidence and planting incriminating evidence.

Media trial:

The media faithfully reproduced the police version. A few examples are cited below:

Two al Badr militants arrested in Delhi

The Times of India, New Delhi|PTI | Feb 10, 2006, 10.51 am, IST

New Delhi: Delhi police have arrested two alleged terrorists belonging to the al Badr militant outfit from North West part of the capital.

Irshad and Nawab both hailing from Kashmir, were arrested from MakarbaChowk in North West Delhi at around 6:30 pm last evening, police sources said adding two kgs of RDX were also recovered from their possession.

http://timesofindia.indiatimes.com/india/Two-al-Badr-militants-arrested-in Delhi/articleshow/1409199.cms

Two suspected Al Badr militants arrested

Hindustan Times, New Delhi, February 10, 2006

New Delhi: Two alleged terrorists of the Kashmiri militant outfit Al Badr have been arrested with a large haul of explosives from northwest Delhi, police said Friday.

Acting upon intelligence information, the special cell of Delhi Police arrested Irshad and Nawaab from MukarbaChowk Thursday evening. Two kg of RDX, two timers, two pistols, three detonators and 16 live cartridges were recovered from them.

They had come from Jammu and Kashmir and were planning terrorist activities here.

Alleged Al-Badr militants held in Delhi; arms seized

The Hindu, New Delhi (Online edition) Saturday, Feb 11, 2006

New Delhi: The Special Cell of the Delhi police has arrested two young men allegedly belonging to the Al Badr terrorist outfit. They were allegedly smuggling in a consignment of arms and explosives from Jammu and Kashmir on Thursday. Two kg of

RDX, three detonators, two timers and two Chinese pistols were reportedly recovered from them.

Last month, intelligence agencies tipped off the Special Cell that some Kashmir-based militants had set up a base in the Capital and Irshad Ali aka Deepak, a resident of Sultanpuri in North-West Delhi, was part of the module.

Investigations revealed that Irshad had been visiting different parts of the country to expand the Al Badr network. The police learnt that Irshad's friend Mohammad Muarif Qamar, a resident of Bhajanpura in North-East Delhi, was also working for the militant outfit. The duo made frequent visits to Jammu and Kashmir to receive consignments of arms and explosives.

Acting on a specific tip-off that the suspects were on their way back from Jammu with yet another consignment, a team under the supervision of Assistant Commissioner of Police Sanjeev Yadav laid a trap at Mukarba Chowk and arrested them. Apart from the explosive and firearms, the police recovered an ABCD timer and an AB timer.

http://www.hindu.com/2006/02/11/stories/2006021114650100.htm

Case 12

State Versus Gulzar Ahmed Ganai and Md. Amin Hajam

FIR No.: 95/06

Police Station: Special Cell

Under Sections: 121/121A/122/123/120B IPC; 4 & 5 Explosive Substances Act 1908 besides the Unlawful Activities (Prevention) Act 2004.

Sessions Case No.: 13/2007

Date of Judgement: 13th November 2009

Judge: Dharmesh Sharma, Additional Sessions Judge II, North Delhi

The Prosecution's Story:

September 2006:

Secret information was received that one Md.. Akmal, code named Abu Tahir, resident of Pakistan and District Commander of banned militant organization LeT operating in Pattan area of Jammu & Kashmir, was sending his associates from Jammu & Kashmir to Delhi and other parts of India in order to collect arms,ammunitions and explosives as well as funds through *hawala* channels for terrorist activities. A team was constituted by ACP Sanjeev Kumar Yadav and Inspector Mohan Chand Sharma. Sources were deployed to get credible information and technical surveillance was also mounted. During such surveillance, it was revealed that one Mustafa had been sent by Abu Tahir to Delhi to indulge in terrorist activities. His hideout was somewhere in Mahipalpur, Delhi.

The prosecution case was further punctured when Sonu Dahiya – the conductor on the bus in which the two accused purportedly travelled from Mori Gate to Kapashera on the night of 10th December – deposed that the last trip from Mori Gate to Kapashera was not carried out on the said date.

10th December 2006 (evening):

Concrete secret information was received that Mustafa along with his associate would arrive from Dhaula Kuan by bus, at Mahipalpur and would proceed to their hideout. The secret information was also to the effect that Mustafa and his associate would be in possession of a huge cache of explosives material and funds that were collected for terrorist activities through *hawala* channels. This was recorded in the Daily Diary and a team of officers of the Special Cell was constituted.

The Special Cell Team:

Inspector Sanjay Dutt, SI Rahul Kumar, SI Kailash Bisht, SI Pawan Kumar, Si Rakesh Malik, SI Harinder, SI Ashok Sharma, ASI Prahlad, ASI Shahjahan, HC Sushil, HC Satinder, HC Krishna

Rao, Constable Narinder, Constable Ran Singh besides Inspector Mohan Chand Sharma

7.00 pm onwards:

Equipping themselves with arms and ammunition, bullet proof jackets and kit, the team departed from the office of the Special Cell in three private cars and three two-wheelers and reached Mahipalpur crossing at about 7.45 pm. An attempt was made to include members of the public as witnesses but no one came forward to assist the police. Therefore without wasting any time as per the briefing given by Inspector Mohan Chand Sharma, the members of the team were deployed in and around the place.

9.15 pm:

Two persons alighted from a bus on route number 729 (Mori Gate to Kapas Hera) bearing registration no. DL 1PB 0249 at Mahipalpur bus stand on National Highway No. 8. These two persons were identified by the secret informer as the alleged terrorists. As the duo started to walk towards Mahipalpur crossing, they were over-powered by the Special Cell team. One of the accused was identified as Gulzar Ahmed Ganai @ Mustafa; the second as Md. Amin Hajam.

Recoveries:

From Gulzar's/Mustafa's bag were recovered two plastic lunch boxes: one, pink-coloured box contained 8 slabs of yellow coloured oil based explosive and from the other tiffin box of yellow colour, 7 slabs of yellow coloured oil based explosive were recovered. The 15 slabs were weighed and found to be of 1.5 kg.

Md. Amin Hajam's shoulder bag contained two silver coloured non-electric detonators wrapped in cotton which were placed inside white coloured socks; 12 wads of Rs.500 each, containing hundred currency notes totaling Rs. 6 lakhs.

The prosecution's case is that the *rukka* was prepared by SI Vinay Tyagi.

How the Case Fell Apart:

The Date of the Arrests: It was revealed in the court that the two accused were not arrested on 10th December 2006 (the date claimed by the prosecution), but almost two weeks prior to that, i.e. on 27th November 2006. The Defence claimed that Gulzar Ahmed Ganai (a student of BA IInd year in J &K) and Md. Amin Hajam (Junior Assistant in the Revenue Department, Government of J & K) had come to Delhi on 23rd November 2006 for an excursion. They were arrested the following day – 27th November – and thereafter kept in unlawful detention, beaten, tortured and then falsely implicated in this case. Two solid pieces of evidence were produced in the court to substantiate this.

- **Eyewitness**:

  One Md. Iqbal testified that he was arrested by the Special Cell on 27th November 2006 and while he was in custody, he met both Md. Amim Hajam and Gulzar Ahmad in the police custody on 28th November and thereafter for the next four or five days.

- **No Bus Service on the date of arrest!**

  The prosecution case was further punctured when Sonu Dahiya - the conductor on the bus in which the two accused purportedly travelled from Mori Gate to Kapashera on the night of 10th December – deposed that the last trip from Mori Gate to Kapashera was not carried out on the said date. His oral testimony was corroborated by the ticket chart/way bill, which had been handed over to the IO and was produced in the court. Perusal of the same explicitly showed that columns indicating sale of tickets in the last trip (starting 7.45 pm from Mori Gate) had not been filled up.

- **The Place of the Arrest remained Doubtful:**

  None of the members of the police party presented as prosecution witnesses could describe the place of occurrence in a convincing manner – despite their claims that they remained at the spot for more than seven hours. None of the witnesses were able to render any vivid description of the property in

front of which the accused persons were arrested and the alleged proceedings and the documentation work conducted. In the photograph, taken at the site, depicting the accused persons along with alleged recovery of articles sitting on a pavement, no background or landmark is visible which could have fortified the police assertion that the photographs of the accused with the seized articles were actually taken from the place of occurrence. There were 14 members in the team and not even one member of the team is shown or depicted in any of the photographs.

Last but not the least, the photographs were taken from a digital camera and the least the prosecution could have done was to produce the memory chip / card to bring some authenticity to their case… "It is not clear if there were other photographs also taken and the possibility of tampering with the photographs, given the fact that computers are capable of doing so many mind boggling things, cannot be ruled out."

Faulty Paperwork:

In the CFSL Form, the IO, ACP Sanjeev Yadav filled out that the explosives were recovered from the accused Md. Amin Hajam (whereas the charge sheet says they were recovered from Gulzar Ahmed) and two non-electric detonators marked D are filled out as having been seized from Gulzar Ahmad Ganai (whereas the charge sheet says that they were recovered from Md. Amin Hajam)

Neither ACP Sanjeev Yadav nor SI Vinay Tyagi who made out the ruqqa cared to explain this glaring mistake.

Police Diary:

The Court exercised its discretion and asked for the police diary, under Section 172 CrPC. Every police officer making an investigation, the Court noted, is obliged to record his proceedings setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation.

Commenting on the casual investigation, the Court asked: "So I wonder was it human mistake or something else. The moot point is: were the mistakes pointed out above bonafide or mistakes committed while attempting to cook up the entire story?

Perusing the police diary "for 10th and 11th December 2006", the Court observed that "there is no mention that the accused person had arrived at Mahipalpur Chowk travelling in bus route no. 729 in bearing no. DL 1PB 0249. This issue was never a trivial one, certainly not as per the police witnesses."

Further, "It is also astonishing to note that though there is a mention that Inspector Mohan Chand Sharma briefed the IO ACP Sanjeev Kumar Yadav about the recovery of explosives, non electric detonators as well as Rs. 6 lakhs from the accused persons, there is no clear indication in the police diary as to what was recovered from which accused persons."

Post Arrest Investigation:

According to the prosecution, the two accused had collected the explosives, detonators and the amount of Rs. 6 lakhs from a *hawala* operator in Mumbai. There is not an iota of evidence as to how or in what manner the accused persons came from Mumbai and on which date. Did they come from Mumbai on the same day when they were arrested i.e. 10th December 2006 or did they had come earlier? Such information could have easily been obtained from the railways or the airlines, if such travel actually took place, concluded the Court, thus casting aspersion on the whole story.

The prosecution also claimed that the accused were proceeding towards their hideout when apprehended but could not lead the police to their hideout. The Court termed this 'unfathomable'.

Court's Remarks:

Commenting on the casual investigation, the Court asked: "So I wonder was it human mistake or something else. The moot point is:

were the mistakes pointed out above bonafide or mistakes committed while attempting to cook up the entire story? These are the doubts which the prosecution fails to explain. It doesn't need divine eyes to see that when there are two views possible, the one favouring the accused should be adopted."

Media Trial:

In reporting the case, the press wholeheartedly embraced the police version and neglected even the most minimum of journalistic norms. The headlines were "LeT terrorists arrested" and were accompanied by pictures of Ganai and Amin surrounded by Special Cell officers. For a typical example, see the story below:

"Two Lashkar men held with RDX"

The Hindu, 12 December 2006

NEW DELHI: Two alleged conduits of banned terrorist outfit Lashkar-e-Taiba (LeT), including a junior assistant with the Revenue Department in Jammu and Kashmir, have been arrested by the Special Cell of the Delhi police at Mahipalpur here. The police claim to have recovered 1.5 kg of RDX, Rs. 6 lakh in hawala money and detonators from them.

A team led by Inspector Mohan Chand Sharma received a tip-off recently that Mohammad Akmal, a resident of Pakistan and LeT district commander of Pattan in the Valley, had been sending people to Delhi to collect money sent through illegal *hawala*

See also the report in *Tribune*, 12 December 2006, which does away with the pretense of balanced reporting and says "Let Men Arrested" and constantly refers to terrorists without the mandatory alleged etc.

Gulzar (left) and Mohd Amin, members of the Lashkar-e-Toiba, who were arrested by the Delhi Police Special Cell, are presented in front of the media in New Delhi on Monday. — Tribune photo by Rajeev Tyagi

http://www.tribuneindia.com/2006/20061212/main7.htm

Case 13

State vs. Tariq Dar

FIR number: 59/06

Under Sections: 121/121A/ 122/23/ 120 B IPC read with 4/5 Explosive Substances Act; 18/20/23 UAPA and 14 Foreigners Act.

Date of Discharge: 24th January 2007

Judge: CMM Seema Maini

Tariq Dar, a Kashmiri, moved to Dhaka in the 2003, where his father had set up a business of handicrafts and exhibited regularly in the annual Dhaka fair since 1995. Dar began modeling and quickly established himself as the leading face in commercial and ramp modeling. He continued to look after the handicrafts business besides.

On 15 September 2006, Dar was arrested by Bangladesh's Rapid Action Battalion (RAB) on a complaint of forged travel documents. He was informed initially that he was wanted by the Indian authorities for his alleged terrorist activities. Soon however, he was told that his modeling was merely a front for his spying activities for RAW. Tariq was accused of human trafficking, spying for India and for being a terror conduit across two nations.

For days, whilst he was being tortured in a dark and dank cell, RAB continued to even deny his arrest. The Indian High Commission wrote six letters to the Bangladeshi authorities seeking clarifications about the charges under which Dar had been arrested. Gradually, public pressure was brought to bear through the intervention of Amnesty International and some prominent citizens of Bangladesh, and the court finally ordered Dar's release. By then Dar had been subjected to 40 days of custodial torture. Three days later, when Dar arrived at the Dhaka airport to board his flight for Delhi, he was practically way laid and quizzed for about 15 minutes by some men from the Indian embassy. None of them were in any official uniforms.

Dar was unaware that he was flying into another nightmare. Upon landing in Delhi, he was received by the Special Cell and taken away while his younger brother who was waiting at the airport for Dar was not even allowed to meet him. For the next twelve days, Dar was kept in the Special Cell thana at Lodhi Road in an enclosed cage. Torture in Special Cell custody surpassed Dar's terrible experience in Dhaka.

Tariq Ahmad Dar's arrest from the airport on 25th October, was ostensibly based on the disclosure statements of two alleged

terrorists, Abu Anas and Mohammad Issa, who were arrested by the Special Cell on 10 August 2006. The Special Cell claimed that the two arrested men had indicated Dar's terrorist link and further, that he was helping a district commander of the Lashkar–e–Taiba, Mohammad Faisal, who was also arrested in Dhaka on the same day as Dar was.

If the Special Cell already had information of Dar's terror activities, why was the Indian High Commission taking an interest in his release in Bangladesh, and why was the MEA writing as many as six letters to the Bangladeshi authorities about Dar? None of these letters mentioned that Dar may have been wanted for crimes in India.

So flimsy were the accusations against Dar, and so utterly devoid of any evidence, that instead of filing a chargesheet against him within the stipulated 90 days, the public prosecutor, Rajeev Mohan, submitted a discharge application. Though the PP and the then Joint Commissioner of Police (Special Cell) Karnail Singh, tried to defend the arrest by saying that evidence could not be gathered as it was in foreign country, the Chief Metropolitan Magistrate, Seema Maini, severely rapped the Special Cell.

Reproduced here is the full text of her order.

FIR No. 59/06

St. vs. Tariq Ahmad Dar
u/s 121/121A/122/23/120B IPC
r/w 4/5 Explosive Substance Act.
18/20/23 Unlawful Activities (P) Act
14 Foreigners Act

24/1/07

Present : Sh. Rajiv Mohan, Addl. PP for State with IO ACP Sanjeev Kumar Yadav

Accused Tariq Ahmad Dar produced from J/C on P/W with counsel Sh. Naushad Ahmad Khan

An application for discharge of the accused has been moved by the State, which is listed for hearing today. I have heard, Ld. APP for State and have perused the record. Except for the disclosure statement of the co-accused Anas @ Rizwan, wherein, the name of the accused surfaced, to be an accomplice in the instant case, no other evidence could either be collected against him, nor anything was recovered from his possession, which would in any manner connect him to the instant case. Since, there is no evidence against the accused in the instant case, as admitted by the prosecution itself, the accused is released in the instant case, henceforth. However, I cannot restrain myself from observing that it is a sorry of state of affairs that a Citizen of India since, I can no longer refer to him as an accused, has been kept in custody for a period of 90 long days, which for an innocent person can actually be and "entire lifetime". The meaning of the concept of "*Liberty*" which has been enshrined as a basic postulate of our Constitution, really needs to be understood by the police so that "deprivation of a person's *Liberty*" does not continue to be justified under the garb of "*pending investigation*".

Copy of this order be sent to DCP, Spl. Cell for information. Present application be filed.

(SEEMA MAINI)
ADJ/CMM:Delhi
24/1/07

Case 14

State Versus Imran Ahmed & Anr

FIR No.: 89/06
Police Station: Special Cell
Under Sections: 121/121A/122 r/w 120B IPC; 17/18 /20/of Unlawful Activities Act and Section 5 of Explosive Substances Act
Sessions Case No.: 32/2007
Date of Judgment: 26th April 2011

Judge: Surinder S. Rathi, Additional Sessions Judge: 02, Tis Hazari

The Prosecution's Story:

In October 2006, secret information was received through a central intelligence agency that a militant, code named Khalid belonging to the banned Lakshar-e-Toiba (LeT), had set up base in Delhi to channelize funds through *hawala* for the purpose of terrorism. The inputs revealed that the actual name of Khalid was Altaf and that his brother Imran, residing in Dwarka, was collecting and transferring funds for terrorism under his instructions.

The Special Cell then organised a team under the leadership of Inspector Mohan Chand Sharma working under the overall supervision of A C P Sanjeev Kumar Yadav.

16th November 2006:

3.30 pm:

Information was received that Imran would be coming to Shopping Complex, Sector 6, Dwarka to hand over a consignment of funds for the purpose of terrorism to one Ghulam Rasool at 6:30 pm.

4.30 pm:

A team was readied and dispatched to Dwaraka in four private cars and two two-wheelers equipped with arms, ammunitions and bullet proof jackets.

It further asserted that "just because a handful of police official of Special Cell of Delhi Police have given a tag of LeT Terrorists to two citizens of our country, this does not become a conclusive proof of their being terrorists.

5.30 pm

The team arrived at the shopping centre Dwaraka and requested about 7-8 passersby to join the team as public witnesses but none of them accepted the police's request; neither did they disclose their names or addresses. The team members took position near the Corporation Bank ATM.

6.45 – 7.05 pm

A person carrying a black rexine bag on his shoulder emerged from the sports complex, Sector 11 side, and was pointed out and identified by the secret informer as Imran. Another person carrying a red and blue coloured bag on his right shoulder approached Imran after 15 minutes and Imran handed over a "bundle wrapped in printed orange colour plastic polythene" to the latter. SI Rajender Singh Sehrawat along with SI Ravinder Tyagi and other members of the team then overpowered Imran and his associate, whose name was disclosed to be Ghulam Rasool.

The Special Cell Team:

Inspector Mohan Chand Sharma, Inspector Sanjay Dutt, Inspector Subhash Vats, Inspector Badrish Dutt, SI Rahul Kumar, SI Ramesh Lamba, SI Vinay Tyagi, SI Ravinder Tyagi, SI Kailash, ASI Sahjahan, ASI Charan Singh, HC Manoj, HC Sanjeev, HC Satender Kumar, HC Bijender Singh, HC Bachhu Singh, Constables Basant, Shiv Mangal, Amar Singh, Ran Singh

Recoveries:

The bundle in the polythene was found to be containing a sum of Rs. 4.5 lakhs. Ghulam's bag was found to contain two cardboard boxes, one from which black and white granulated explosive material weighing 1.650 kg was seized; another containing two green coloured ABCD Timers wrapped in a plastic sheet with wires switches.

The prosecution claimed that the recoveries proved beyond doubt that the two were members of the LeT and engaged in waging a war against the country.

How the Case Fell Apart:

No Evidence:

The court emphasized that the prosecution had failed to place before it any "specific evidence, either oral or documentary or in any electronic form" that "could show that both or either of the

accused are members of LeT or had any proximate or otherwise nexus with this organisation."

It further asserted that "just because a handful of police official of Special Cell of Delhi Police have given a tag of LeT Terrorists to two citizens of our country, this does not become a conclusive proof of their being terrorists. No doubt that LeT has been notified as a terrorist organisation which has aim an objective of destablising our country but when a citizen of our country is accused of being member of such a terrorist organisation, then the agency making such accusation is supposed to have substantive pieces of evidence, howsoever, ever ill gotten those evidences may be."

And clearly, the prosecution failed singularly in this.

Questions for the Special Cell:

The Court raised these following questions:

Why was Inspector Sharma not made a witness?

While all witnesses deposed that Inspector Mohan Chand Sharma was assigned to the operation on and before 16th November 2006, his name was not even mentioned in the list of witnesses.

The court observed that the non inclusion of the name of Inspector M.C. Sharma in the list of witnesses could indicate only one thing: the "Special Cell was not desirous of exposing this witness for the rigors of cross examination qua methodology and technology adopted in developing the claimed CIA input." Production of this witness would have proved unfavourable to the prosecution.

Why was a junior policeman made the Investigating Officer (IO)?

SI Rajender Singh Sehrawat, one of the junior most participants, was shown to be initial IO, even though Inspector Sharma handled the operation and even though there were other senior colleagues such as Inspector Sanjay Dutt, Inspector Subhash Vats and Inspector Badrish Dutt apart from the SI.

"The clandestine manner in which the senior officers shirked from their role of taking over the investigation and becoming a witness in this case despite heading the entire operation", the Court concluded, "smacks that something was seriously amiss in the whole story."

Contradictions:

- ACP Sanjiv Kumar Yadav [PW9] stated on oath that the intelligence input received in October 2006 was with reference to both money and explosives. This submission is in total contradiction with not only deposition of all other witnesses but also in clear contradiction of the chargesheet, which states that the input was "only qua the money and nothing else."
- The ACP stated that arms were recovered from both accused whereas no records, including the chargesheet mention anything about the recovery of arms.
- HC Manoj [PW5] deposed that the *rukka* which was handed over to him from the spot consisted of only two pages, but *rukka* appended with chargesheet magically transformed into seven pages, forcing the Court to conclude that records had been fudged "to make out a case."
- Documents which were supposedly prepared prior to execution of FIR contained the FIR No., and that too in the same handwriting and pen.
- SI Ramesh Lamba [PW3] claimed having undertaken technical surveillance. However, there was nothing on record to show that either of the accused carried any mobile phone or that they were in touch either with each other or with any other third person.

Public Witness:

The fact that the Special Cell made no effort to ensure the presence of public witnesses in their operation, despite there being three hours between the supposed receiving of secret information at 3.30

pm and the alleged apprehension of the accused at 6.30 pm, is "indicative of the fact that the team was not keen at all in joining any public witness."

The Use of Private Vehicles:

The use of private vehicles, the Court noted with displeasure, did not allow the Court to examine the log books of the Special Cell vehicles. Thus there was no way to check the authenticity of the prosecution story about the team going to Dwaraka at 4.30 pm on 16th November 2006.

Post Arrest Investigation:

The investigation came to a grinding halt after the arrest, with the Special Cell making no effort to trace the source of monies or explosives seized. The Cell made no attempt to visit Imran's home in Dwaraka, or the company that employed him, or Ghulam's home in Azadpur.

Explosives:

- The Special Cell did not engage the services of any explosives expert, which only proved in the Court's eyes that "Special Cell was not interested in joining any other person apart from its Special Cell team member." In the absence of expertise, the Court wondered how, the Special Cell could claim in the *rukkaa* that black and white granulated material recovered from accused Ghulam was actually an explosive.

The Special Cell did not engage the services of any explosives expert, which only proved in the Court's eyes that "Special Cell was not interested in joining any other person apart from its Special Cell team member."

- The seizure memo described the seized material as "black and white granulated material" whereas the FSL Report termed it "a Black Grey Powdery mixture".
- This material was sent to CFSL Laboratory after unexplained delay of 14 days on 30th November 2006.

- There was discrepancy between the quantity of the material which was said to have been drawn from the site, and what reached the CSFL.

Court's Remarks:

While acquitting the two accused, the Court concluded that the operation of the Special Cell had been clandestine, lacked transparency, violated all established legal norms and did not inspire confidence at all. Moreover, the case law cited by the court clearly pointed out to the possibility of a frame up, even though the court did not explicitly articulate this as such.

For example, the court pointed to the case titled *Darshan Singh versus State of Punjab*, (P&H) 1998(4) R.C.R. (Criminal) 164, where it has been observed:

"Police officials as we know, are interested in the success of the case detected by them and to achieve success in the case detected by them, they show sometimes vehemence also."

Further, referring to the rampant procedural lapses, the Court recalled *Peeraswmi Vs. State of NCT Delhi*, 2007 (4) R.C.R. (Criminal) 339 where the Hon'ble Delhi High Court observed:

"This procedure is not a mere formality for the sake of it but it provides the safeguard against false implication of persons."

The Truth:

Imran, a student of aeronautical engineering, who had studied in various institutes throughout the country, was picked up by the Special Cell, not on 16th November as claimed by them, but a day before, on 15th November 2006 from his Dwarka House. The cash seized from his house was the money raised by his father by selling their land in Kashmir to enable Imran to buy a house in Dwaraka. The money was returned by the Court to Imran. His co-accused Ghulam Rasool was arrested from the exit gate of Palam Domestic Airport as 5 pm and explosive substances were planted upon them.

Media Trial:

Media reports simply reproduced the police version of the story. See the story in *The Hindu* (23 November 2006) titled, "RDX seized in Delhi; two arrested"

PRIZE CATCH: Suspected Lashkar-e-Taiba militants Imran Ahmad Kirmani and Ghulam Rasool Bafanda in police custody on Wednesday. - PHOTO: AFP

http://www.hindu.com/2006/11/23/stories/2006112314650100.htm

Lashkar suspects in net

Telegraph, 23rd November 2006

OUR SPECIAL CORRESPONDENT New Delhi, Nov. 22: Delhi police today arrested two men they say belong to a Lashkar-e-Toiba cell that they suspect could have been involved in a plan to attack India's nuclear facilities.

"We know there is an LeT plan to attack Indian nuclear establishments and we suspect these men could be part of the plan," deputy commissioner of police (Special Cell) Alok Kumar said.

LeT man with aircraft care training held

The Economic Times, November 23, 2006 | TNN

NEW DELHI: The Special Cell of Delhi Police has arrested two alleged LeT terrorists from Dwarka in south-west Delhi, one of whom was living in the Capital for the past one year and had been receiving money through hawala channels on behalf of the outfit. The man, Imran Ahmed Kirmani (25), had done a three-year course in aircraft maintenance from Jaipur and was looking for a job here, police said. He was caught handing over Rs 4.5 lakh in cash to Ghulam Rasool Bafanda (45)

While the arrest of Imran and Ghulam was surrounded by sensationalist news coverage, the acquittal was covered by a single report. See Muazmil Jaleel's "Held for '9/11 plot; no case four years later" in the *Indian Express*. (http://www.expressindia.com/latest-news/Held-for-9-11type-plot-no-case-4-years-later/854879/)

Case 15

State Versus Md. Mukhtar Ahmad Khan

FIR No.: 48/07

Police Station: Special Cell

Under Sections: 121A/123/120B IPC & 18/20/23 of UAP Act & 4/5 of Explosive Substances Act

Sessions Case No.: 48/07

Date of Judgment: 21st April 2012

Judge: Surinder S. Rathi, Additional Sessions Judge-02, Tis Hazari Courts

The Prosecution's Story:

May 2007:

Secret information was received by Special Cell of Delhi Police that Abu Musab @ Tahir and Abu Hamza, both residents of Pakistan and District Commanders of banned militant organization Lashkar-e-Tayyaba (LeT) at Kupwara and Baramula in J&K, planned to carry out terrorist activity in Delhi as per directions of their Pakistan-based Chief Commander Abu Al Kama. Their plans were to be carried out by Mukhtyar (or Mukhtar), a native of Kupwara in J&K.

In order to develop this information, a team supervised by ACP S.K. Yadav and led by Inspector Mohan Chand Sharma was formed. The team deployed informers, developed contacts and mounted technical surveillance. In so doing, the team learnt that Mukhtyar had arrived in Delhi on 29th May 2007. He was learnt to be staying in Seema Lodge in Churiwalan near Jama Masjid. SI Dilip Kumar, SI Devender and HC Sandeep were responsible for tracing him.

8th June 2007:

The Special Cell tracked Mukhtyar continuously till, on 8th June; he disappeared from his hotel in the morning.

12th June 2007:

A secret informer visited SI Dharmender Kumar at the Special Cell Office to convey that Mukhtyar had left for Kashmir but was returning on that day itself to deliver a huge consignment of explosives to his associates at 4.30pm. The rendezvous was fixed at the 'In' gate of Azadpur fruit market. This information was recorded in the Daily Diary (DD) and a team was prepared to conduct the raid.

The Special Cell Team:

Inspector Mohan Chand Sharma, SI Rahul Kumar, SI Ramesh Lamba, SI Dilip Kumar, SI Ravender Tyagi, SI Dharmender

Kumar, ASI Charan Singh, ASI Sanjeev Lochan, SI Sanjeev Kumar, ASI Haridwari, ASI Anil Tyagi, ASI Prahlad, HC Udaibir, HC Krishan Ram, HC Sanjeev, Constables Parvesh, Rajender, Rajiv, Balwant, Amar Singh and Ran Singh.

3.00 – 4.00 pm:

While ASI Sanjeev Lochan, ASI Hardwari, ASI Prahlad and Ct. Balwant were sent to keep a watch on Seema Lodge, the rest of the team equipped itself with arms, ammunition, bullet proof jackets and IO kit and left for Azadpur fruit market in four private cars, one official Gypsy and one two-wheeler and reached there in an hour's time. The team failed to persuade any passersby to join as public witnesses.

4.00 – 4.40 pm:

The accused—identified by the secret informer as Mukhtar—was seen coming on foot from Mukarba Chowk side carrying a red and blue coloured bag on his right shoulder. He waited at the bus stop of Sarai Peepal Thala near the 'In' gate of the fruit market for about 25 minutes. When no one appeared, Mukhtyar started walking towards the Model Town side, at which point, on the signal of Inspector Mohan Chand Sharma, the accused was overpowered by the police party. A search of his bag threw up 15 slabs of yellow-coloured, oil-based explosive material (1.5 kg), two silver-coloured electronic detonators and one black-coloured timer besides, clothes, toothpaste, brush, etc.

All recovered items were sealed by SI Dharmendra Kumar in the presence of Md. Rafiq and Narender Singh, members of the public who had collected there while the accused was being apprehended by the police.

ACP S.K. Yadav took over the investigation. A search was conducted at Seema Lodge and the following items were seized: the guest register proving Mukhtar's stay at the Lodge, a passport having a visa of Pakistan, a bunch of letters written in Urdu, one Nokia phone (SIM No.09906731639), one DTC bus ticket from Delhi to Lahore (dated 13th June 2007) in Mukhtar's name, and some

white chemical like powder.

Mukhtar's phone is said to have revealed the phone numbers of Abu Hamza, Abu Musab and Abu Saad. The recovered phone connection was in the name of one Nazir Ahmad Lone, whose affidavit (which denied procuring the number) was submitted by the prosecution. All 24 prosecution witnesses deposed along the lines of the prosecution's story.

How the Case Fell Apart:

The Court said that "no specific evidence, either oral or documentary or in any electronic form has been placed, proved or relied on record which could show that accused is a member of LeT or had any proximate or distant nexus with this organisation."

Observing that "it is a settled legal proposition that higher is the gravity of the offence charged, stricter shall be the appreciation of evidence requiring very close scrutiny as to the qualitative nature and believe worthiness of the same", the Court examined in detail the evidence placed before it:

The Recovered Cell Phone:

"There is nothing on record to show that this phone belongs to the accused or was ever used by him for talking to any other member / commander or Chief of LeT."

In order to demonstrate the accused's connection with LeT, the prosecution claimed that he disclosed the phone numbers of the LeT leadership. However, "there is nothing on record to show that if these numbers were ever used by the said claimed terrorists."

Moreover, these numbers were operational in the State of J & K and not in Pakistan, whereas the chargesheet stated that the three LeT Commanders and Chief were residing in Pakistan and not in India.

Post Arrest Investigation:

During cross-examination, the investigating officer conceded that it was scientifically possible to trace a person with an operational

phone number. At the same time, he admitted that the Special Cell made absolutely no effort to trace either Abu Al Kama or Abu Musab @ Tahir or Abu Hamza in J&K. Strange also the fact that the Special Cell did not bother to take the accused to J & K for any investigation during the period of police remand.

The Court concluded that "there is something seriously amiss either with the claimed secret inputs or with the functioning of Special Cell."

"Just because a couple of Police Officials of Special Cell of Delhi Police have so deposed in their statements in the Court, accused Mukhtar cannot be given the tag of LeT Terrorist in the absence of any conclusive proof in this regard."

The Court threw out the charges made under section 46 and 20 of UAP Act against Mukhtar.

Secret Information:

- **Procedural Lapses:**

The whole case was set into motion as a result of secret information received by the Special Cell in May 2007. The Court was surprised then that there was no specific date, time and place of receipt of such information in the records placed before it. Surely, the Court observed, the police were aware of the legal requirements of recording such information in writing. Not only is this a legal necessity but also a "harbinger of safety and fair play".

Taking a very strict view of this failure of the Special Cell, the Court inferred "that either the story of receipt of input was introduced subsequently according to what suited the IO or else the inputs received were of different nature which were not placed on record as they might not had suited the line of investigation."

- **Further Goof-ups:**

According to IO, the initial secret inputs were received by Inspector Mohan Chand Sharma, a fact/claim not reflected either in the chargesheet or in the Section 161 Cr.PC. statement of this

Inspector. Whereas the IO claimed he was briefed by Inspector Mohan Chand Sharma about the receipt of secret input, the Inspector in his statement states that it was the ACP who briefed him.

- **No Sharing of Secret Information:**

There is no record of the Special Cell sharing such vital information about potential terror strikes in the capital city with any other investigating or intelligence agency.

The Court concluded that "there is something seriously amiss either with the claimed secret inputs or with the functioning of Special Cell."

Glaring Contradictions:

- On the one hand, the Special Cell claimed to have learnt of the identity of the accused on 30th May 2007 from their secret informer, whereupon, they mounted technical surveillance and kept a secret watch over him at Seema Lodge. On the other hand, they not only allowed him to disappear on 8th June 2007, but also needed the aid of the secret informer to identify him at Azadpur fruit market on 12th June 2007 when they arrested him.
- This shows, said the Court, that either the Special Cell were not aware about the identity of the accused any time before that day or that the story of his arrest at the Subzi Mandi was devised subsequently.
- No evidence to show how technical surveillance was kept and what gadgets were used. No photograph or videography of the accused under surveillance was produced before the court, as should have been, if the accused was really being tailed, as claimed by the Special Cell.
- Two telephone numbers were entered against Mukhtar's name in the Lodge's guest register. The chargesheet remains silent on these two numbers but instead shows another number seized from him. The Court was forced to conclude that "on the hind

side totally different number i.e. 9906731639 was apparently planted over him".

- The Guest Record of Seema Lodge shows that the accused was not alone when he checked into the lodge but the investigation is totally silent on the identity of the remaining persons whose names and addresses are also available in the register.
- All the details about his name, address and parentage were correctly entered in the guest register leading the Court to say that "it is not natural that a person who is claimed to be a terrorist would stay in a lodge in Delhi in his own name and parentage carrying his passport and other travel documents in the manner shown". Had Mukhtar been a LeT terrorist, he would have definitely disguised himself by using a fake or acquired name.

Implausible Story:

The Court also found it unnatural that a terrorist would have left his cell phone behind in his guest house while he went off to collect explosives to Kashmir. It also casts suspicion on the police version of the story since they claimed he was constantly in touch with his LeT masters over the phone. The only possible explanation the Court could draw from this was that the "story of leaving the phone appears to have been deliberately introduced by police in order to avoid explaining lack of Cell Tower Tracking Movement of this phone from Delhi to all the way to Kashmir and back between 8.6.2007 and 12.6.2007."

Another improbable aspect in this case is that as per the personal search memo of accused, he was carrying only Rs1200/ cash and his Icard of a private company at Kupwara, but strangely he did not have the key of his room at Seema Lodge. As per Rafiq Ahmad [PW2], Manager of the Lodge, the room was opened by the police with the help of a duplicate key. It is highly improbable that the accused would not be carrying the original key of his room on 12th June 2007 despite the fact that his belongings were lying in the room.

Questions for the Special Cell:

Why did not the Special Cell bother to raid the accused's room at Seema Lodge between 8th June 2007 when he was said to have disappeared, and 12th June 2007 when he is shown to have resurfaced with explosives?

Similarly, they allowed the four other persons who checked into the Lodge, to walk away from the Lodge, despite 24x7 shadowing. If the Special Cell is to be believed, they could have been hard core terrorists. But the sheer fact that no such thing was done by the Special Cell shows that they knew that they were not terrorists and there was nothing to fear about them.

There is nothing on record to show that suddenly on 8th June, the Special Cell lost track of him or that this caused any alarm or commotion in the police circles.

While the Special Cell claims to have been aware of the name, parentage and phone number of Mukhtar right from the start, the first written document in the case refers to him as "one *Mukhtar R/o Kupwara , J&K"* failing to mention that this was the Mukhtar under police surveillance. Usage of these specific words, underlined the Court, indicate that there was something seriously amiss in the manner in which the police narrated the facts of this case.

The so-called explosives expert examined by the Special Cell was only qualified in Physics and was not even a Chemistry Graduate!

While all prosecution witnesses maintained that it was SI Dilip who was assigned the duty of shadowing and keeping a watch on the accused right from 30th May 2007, in his deposition in the Court SI Dilip started his deposition with his role only during the post arrest stage. He is totally silent about playing any role in this case prior to 13th June 2007.

Public Witnesses:

SI Dharmender received secret inputs around noon that Mukhtar

would be arriving to meet his associate at Azadpur at 4.30pm. The distance between the Special Cell office and Azadpur Mandi is 20 km and is dotted with numerous government offices. In the four and a half hours they had, and on the long stretch to Azadpur, the Special Cell could have enlisted some credible independent witnesses.

Narender Singh Rana [PW1] conceded to the court that he first noticed the accused when he was already in police custody. His presence at the site also raised the Court's suspicion, given that he was shown to have been a security guard at the Azadpur Mandi gate but no document was furnished to prove this. The Court held that "he appears to have been brought to the spot subsequently only in order to give colour to this case. This appears to be a deliberate act of over doing on the part of the Police Officials which itself arouses suspicion."

Explosives:

- What then of the explosives allegedly seized from the accused? The Court noted that despite the claim of seizing 15 individual sausage shaped mounds of explosives, only 10 gms each was lifted from two packets and sent for testing. Such a sample cannot establish conclusively that the entire 1.5 kg of material was explosive.
- The sample from the seized material was sent for testing only after a month, in violation of all settled legal norms —raising suspicions of tampering.
- The seal of DK (Dharmender Kumar), which was appended on the claimed explosives on 12th June 2007, though shown to have been initially handed over to public

From the very inception up to the filing of the chargesheet, the entire prosecution case was plagued with severe doubts and improbabilities. So flimsy was the case that it "hangs on the hinges on the brink of being a case of planted recovery on the evidently innocent Mukhtar."

witness Narender Singh Rana, was taken back from him just after 10 days. This means that for around two weeks before the samples were sent to the CFSL both the seals and the parcels were with initial IO of the case.

- Absolutely no endeavour was made to take the accused to J &K to track and nab the source of the explosives during the police remand.
- Neither was any effort made to trace Shabir, who was supposed to receive the consignment of explosives from Mukhtar.
- The so-called explosives expert examined by the Special Cell was only qualified in Physics and was not even a Chemistry Graduate! No wonder then that the report submitted by him is cryptic and does not indicate the purity percentage of explosives in the sample.
- He was not even aware of the classification of explosives into different classes under Schedule I of the Explosive Rules. All he knew was that explosives were of two types: High and low explosives!
- The tests conducted by CSFL were primitive and obsolete. The Court felt it unsafe to rely on the "expertise and opinion" of the expert.
- The forensic expert conceded that he prepared the report only on those parametres as dictated by the IO, failing to check the said sample for its strength, density, intensity, velocity, quality, temperature and percentage of its composition. The Court thus also questioned his independence.
- Even though the expert was qualified in Physics and not in electronic devices and gadgets, he was made to give his opinion about the claimed detonators and timer. The Court had "no hesitation in concluding that Expert Report appears to have been clandestinely prepared in a hurried manner without adhering to statutory rules and as such score very low on reliability scales."

The Pakistan Connection:

The Court dismissed the prosecution contention that Mukhtar was setting up a terror base in Delhi. The valid passport, visa and ticket indeed prove that he was innocent rather than guilty. Simply because the accused was desirous of visiting Pakistan in order to see his relative and attend a marriage there, he could not be looked upon as a terrorist.

Why was there no attempt made to trace Abu Musab, Abu Hamja and Abu Al Kama, alleged kingpins of LeT, whose names appear in the chargesheet? "This goes on to show that these names were added in the investigation only to give colour to this case."

The Court's Remarks:

"It is inappropriate that such like cases are shown to be cracked primarily on the basis of legally inadmissible disclosure statement of accused followed by some spot recoveries on secret informations."

From the very inception up to the filing of the chargesheet, the entire prosecution case was plagued with severe doubts and improbabilities. So flimsy was the case that it "hangs on the hinges on the brink of being a case of planted recovery on the evidently innocent Mukhtar."

The Truth:

Mukhtar was detained by Special Cell on 7th June 2007 noon time. The Court dismissed the prosecution's story that after more than a week of continued shadowing of the accused, he suddenly went missing on the morning of 8th June 2007.

Media Trial:

Lashkar militant arrested with RDX, detonator, timer

Tuesday, June 12, 2007, 19:12 [IST]

New Delhi, June 12 (UNI) Police arrested a Lashkar-e-Toiba militant from Azadpur Subzi Mandi area in North-West Delhi this evening along with substantial quantity of explosives.

Mukhtar Ahmad Khan, who hails from Kupwara in North Kashmir, was arrested at about 1700 hrs from the Azadpur Subzi Mandi, said a senior police official of the Special Cell.

''Nearly 1.5 kilogram of deadly RDX, two detonators and a timer were seized from the possession of the LeT operative.'' The arrest was made on the basis of a tip-off and initial interrogation has revealed that he was to pass on the 'consignment' to his contact in Delhi, the officer added.

(http://news.oneindia.in/2007/06/12/lashkar-militant-arrested-with-rdx-detonator-timer-1181655720.html)

Militant produced in court

The Tribune, New Delhi, June 13

Suspected Lashkar-e-Toiba militant Md. Mukhtar Ahmad Khan, arrested last evening from the busy Azadpur Sabzi Mandi, was allegedly all set to visit Pakistan today by the Delhi-Lahore bus service. A ticket of Delhi-Lahore bus and a passport with a visa for Pakistan have been recovered from him. He allegedly wanted to go there to meet his mentors in POK for deciding the future course of action and assignments.

DCP, Special Cell, Alok Kumar, said at a press conference he had been directed by the Pak base chief commander of LeT, Abu-Al-Kama, to carry out terrorist activities in Delhi.

He had been directed to give shelter to others assigned for a similar task. The explosives seized from him were to be delivered to an accomplice in Azadpur Sabzi Mandi. The contraband had been taken from Kashmir.—**OC**

Suspected LeT militant Mukhtar Ahmad Khan in police custody in the Capital on Wednesday. —A Tribune photograph

http://www.tribuneindia.com/2007/20070614/delhi.htm#4

Case 16

State versus Md. Iqbal @ Abdur Rehman, Nazarul Islam @Madhu and Jalaluddin @Hamid @ Babu Khan

FIR No.: 23/08
Police Station: Special Cell
Under Sections: 121, 121 A/ 122/ 123/ 120 B IPC
18/20/23 U A P A ; 4 & 5 Explosives Acts
Sessions Case No.: 09/2009
Date of Judgement: 19th November 2009

Judge: Pawan Kumar Jain, Additional Sessions Judge, Tees Hazari

The Prosecution's Story:

First week of May 2008:

In the first week of May 2008, intelligence inputs were received from a c entral intelligence agency that Pakistan trained outfits like Jaish-e-Mohammad and Lashkar e Toiba (LeT) along with HUJI of Bangladesh were conspiring to cause large-scale terror activities in Delhi.

According to the inputs one Qamar @ Nata (a commander of HUJI) was planning to send trained terrorists of LeT to Delhi. One Abdur Rehman had been specifically asked to cause blasts in the capital city by Qamar @ Nata. This information was also revealed in the course of the interrogation of Jalaluddin who was in the custody of the UP police, arrested in connection with the Varanasi bomb blasts and other such blasts in the state.

21st May 2008

On the basis of secret information received by Inspector Mohan Chand Sharma, Abdur Rehman was arrested from Chelmsford Road, near the New Delhi railway station. Upon interrogation, he confessed of being an active member of HUJI, and of having been in touch with Qamar. Nothing incriminating was recovered from his bag. At 9.00 pm, information was relayed to ACP Sanjeev Yadav that the accused had been apprehended, and at 10.45 pm. Abdur Rehman was produced before Yadav, whereupon he was searched. The search revealed a railway ticket from Howrah junction to New Delhi Railway Station (dated 20th May 2008). Upon interrogation, Abdur Rehman revealed that he had concealed explosives and detonators at a vacant place near D Block Masjid, Janakpuri (in West Delhi).

The only 'evidence' that the prosecution could produce were the disclosure statements that the accused belonged to terrorist organization—and this confession was deemed inadmissible by Section 25 of the Evidence Act.

Rehman led the Special Cell team to the mosque and got recovered 3.1 kg RDX,

a DCBA green-coloured timer and 5 silver detonators. The recoveries were made in the presence of public witnesses.

During the course of investigation, Jalaludin (in Lucknow jail) and another person, Nazrul Islam (then lodged in Jaipur Jail) were interrogated, and ultimately arrested in this case.

The secret information received by the Special Cell was not reduced into writing , and yet the officers deposing before the court could reproduce it verbatim after three years during the course of the trial.

The Special Cell Team:

Inspector Mohan Chand Sharma, ACP Sanjeev Yadav, SI Basant Kumar, SI Dharmendra Kumar, HC Udayvir Singh, Inspector Rajinder Singh Sehrawat

Order of Charge (7th January 2010)

All of the accused were discharged of offences under IPC and UAPA.

Sections 121, 121 A/ 122/ 123/ 120 B of IPC.

It was noted by the Court that no evidence was placed before the Court or recorded which would connect the accused with material or criminal conspiracy to wage war against the state. Since there was no evidence on record regarding the collection of arms or making preparation to wage war against the state, the Court therefore held that no offence was made out u/s 121, 121 A/ 122/ 123/ 120 B of IPC.

Moreover, Jalaluddin and Nazrul were in Lucknow and Jaipur prisons respectively, at the time of their arrest, so obviously no occasion to conspire could even have arisen.

Sections 18/ 20/23 of UAPA

The court further asked whether the case could be made out under sections 18/ 20/23 of UAPA. Section 18 refers to conspiracy and abetment to commit terrorist acts defined under section 15 of UAPA. It found that no evidence had been collected or placed on

record by the prosecution to indicate that offences under these sections of UAPA[4] had been committed.

The only 'evidence' that the prosecution could produce were the disclosure statements that the accused belonged to terrorist organization—and this confession was deemed inadmissible by Section 25 of the Evidence Act.

The FSL report confirmed the presence of RDX explosives, working timer and detonator and thus a *prima facie* case against Md. Iqbal u/s 4 & 5 Explosives Act was made.

So, while Jalaluddin and Nazrul were discharged, charges were framed against Abdur Rehman @ Md.. Iqbal u/s 4 & 5 of the Explosive Act.

How the case against Abdur Rehman Fell Apart:

1) Rehman's statement under 313 CrPC:

In his 313 statement, Abdur Rehman denied all allegations made by the prosecution and instead stated that he was picked up by the Special Cell from Seelampur (East Delhi) on 21st March 2008—and *not in May* from the railway station as alleged by the prosecution. He was put in a car withhis face was covered, and this made him lose consciousness. He was furthermore detained in an unknown location for two months. Thereafter, he was brought to the Lodhi Road office of the Special Cell and produced before the media. During interrogation, he was forced to sign on blank sheets of paper. He was shown photographs and when he refused to identify them, he was beaten. Nothing was recovered from him, nor did he make a statement to the police.

2) Secret Information:

The secret information received by the Special Cell was not reduced into writing , and yet the officers deposing before the court could reproduce it verbatim after three years during the course of

[4] "... Any act which not only threatened or likely to threaten unity, sovereignty of India or with intent to strike terror to any section of people of India by using bombs, explosive substance or fire arms etc causing death of the people."

the trial. This was, in the court's own words, "difficult to digest".

3) Doubt over Recoveries:

There was an inordinate and unexplained lag of 27 days in sending the samples of the recovered items to CSFL for testing. During this period, the seal was not handed over to the public witnesses but remained with the investigating officer. In these circumstances, tampering with samples and case property could not be ruled out. This cast a long shadow over the authenticity of police claims about the recovery made.

5) Hardly any Evidence:

The prosecution's attempt to pass of the railway ticket as clinching evidence of the guilt of Abdur Rehman did not cut ice with the Court, which ruled that the ticket merely showed that the ticket was valid, not that it was brought or used by the accused. Admittedly, even by police records, he was apprehended from Chelmsford Road, near the station and not from the train. So really, there was no proof to say that the accused had travelled against the ticket.

6) Public Witnesses:

The Defence argued that the public witnesses at the time of the recovery of explosives were planted. The court also noted that at the time of apprehending the accused at around 9.00 pm, the police had failed to enlist any independent member of the public as witness,not even railway employees; though the alleged apprehension took place near a railway station. It seemed strange then that the police managed to engage public witnesses at midnight when they went to make the recoveries.

7) The mysterious Guru:

According to the Police, the recovery of explosives was made following Abdur Rehman's disclosure statement. The disclosure stated that in 2007, Rehman worked at Masjid Sitapuri, Delhi, and received RDX and detonators from one Guru. But after his companions—Jalaluddin and Nazrul Islam— were arrested, said

the disclosure statement, he hid the explosives in D Block Masjid, Janakpuri which he used to visit to meet one Arif. The court noted that no investigation was made to prove that the accused ever worked in Masjid Sitapuri in 2007; or that he used to visit Janakpuri Masjid to meet Arif; or to trace down the terrorist Guru who had allegedly handed Abdur Rehman the explosives in the first place. The IO, in his cross examination, deposed that though efforts were made to draw a sketch of Guru, it was never issued. Even the supposed sketch was never placed before the court. The Court also wondered why no supplementary chargesheet was filed against this Guru.

8) Lapses:

a) No efforts were made by the police to procure the accused's fingerprints on the incriminating items. Moreover, no videography was undertaken at the time of recovery.

b) According to the prosecution, Abdur Rehman was apprehended at 8.45 pm and *rukka* was prepared at 9.45 pm. He was then produced before ACP Yadav at 10.45 pm. Rehman was interrogated by Yadav for about 15-20 minutes, after which his arrest memo was prepared. It was only after this that he was searched and the ticket recovered. Does this mean, asked the Court that he was not even searched from the time of his apprehension? This was, in the words of the Judge, "not digestible".

c) Omission of Inspector M.C. Sharma from the list of witnesses: According to the prosecution, it was Inspector Mohan Chand Sharma who received the secret tip off and it was he who led the operation to apprehend the accused, and again, it was he, who informed the ACP of the arrest. And yet, the Court wondered, the prosecution had not felt the need to even list him as a prosecution witness. Neither was any explanation offered for this inexplicable omission of Inspector Sharma.

Thus the court concluded that the case against the accused, even u/s 4 & 5 of Explosives Act could not be proved. It therefore acquitted Abdur Rahman.

Demands

The recent revelations that Maharashtra ATS pressurized accused in Maleagon blasts to name innocents in disclosures points to how deep-seated and systemic the malaise of fabrication and frame-ups has become. The cases discussed in this report are only indicative.

We demand therefore, the following:

1) National Commission of Enquiry: The establishing of a national commission of enquiry to document and investigate the numbers of such cases across the country.

2) Compensation and Rehabilitation:

   a) A comprehensive rehabilitation package, including assistance in education and occupation, should be devised and announced for those wrongfully incarcerated on false charges;

   b) Provide for compensation to be paid to the victims of false prosecution in terms of the Judgements of the Delhi High Court and in *Tasleema versus State of Delhi* 161 (2009) DLT 660 and *Prempal versus Commissioner of Police* W.P. © 11079/2006 dated 25th March 2010.

3) Public Apology: A public apology by the government and the investigating agency must be tendered to those who have suffered wrongful arrests, prosecution and incarceration.

4) Scrap/disband the Special Cell of Delhi Police with immediate effect.

5) Action against officers involved in Frame ups:

   All those officers of investigating agencies against whom the Courts have drawn adverse inferences for targeting innocents must be:

   a) Suspended with immediate effect;

   b) Proceeded with departmentally, by taking disciplinary action and in cases where there exist promotions and awards as a result of these false cases, then they ought to be stripped of such promotions and awards.

   c) Prosecuted for the crimes that have been committed in the process of foisting false cases against innocent accused by filing FIRs and investigation by CB/CID.

6) Section 197 CrPC (which requires sanction of the Government to prosecute public officers for offences alleged to have been committed purportedly during the discharge of their duty) should be made inapplicable to police and investigating agencies in case of false prosecutions, incarceration, torture, registering of false cases etc.

7) The present Prevention of Torture Bill must be scrapped and replaced with a new bill in conformity with the Convention against Torture.

8) Intelligence agencies must be brought under the purview of Parliamentary oversight.

Appendix I

"Dear PM, the Special Cell is a group of licensed marauders":
Irshad Ali's letter from Tihar Jail

The Prime Minister of India
South Block

Dear Sir,

I am writing this letter from the confinement of Tihar Jail with the aim to save innocent youth from getting trapped into the net woven by unscrupulous men in the security agencies to earn rewards and promotions in the name of fighting terrorism. I hope it will help people and your readers and enable them to largely save themselves. Let me introduce myself. My name is Irshad Ali, S/o Mohamamd Yunus incarcerated in Ward No. 5 (High Risk Ward) Cell No. 13 in Jail No. 8 of Delhi's Tihar Jail.

Many of you may have recently read my story in *The Times of India* dated September 13, 2007 citing a CBI report confirming that IB and Special Cell of Delhi Police had framed us. But, I suspect if the CBI report goes further and nails the actual culprits.

I was working as an Informer for the Special Cell of Delhi Police, which works closely with the IB to nab terrorists. Having worked closely with them, I feel duty bound to appraise the nation of the working of these agencies and how they manufacture terrorists. They have made the war on terrorism a total farce. Have you ever noticed how quick our agencies are in nabbing the culprits even

before they strike? But, how interesting it is that still they have not yet been able to lay their hands on any terrorist involved in Mumbai and Delhi blasts? Why? I have answers.

In order to keep their ranks and earn rewards, Special Cell creates terrorists. I will tell you how these agencies work. They have employed a number of youth, on a very paltry remuneration. They are not regular employees, but just vagabonds, who are given mobile phones and protection. They are asked to fan out and hire accommodation somewhere in the city. They mingle with unemployed youth and befriend people around. After identifying vulnerable targets, they form a group, arrange weapons and incite these youth to go for a robbery. Special Cell secretively also provides them a stolen vehicle, which is procured from known car thieves.

These youth who vest all their trust in the Special Cell agent finally one day decide to go for an operation. Upon reaching the target, they are trapped in the net, like a fish. At the targeted place, Police is already there to receive them and they are all nabbed without resistance. Interestingly, the agent, who is also a mastermind never, gets in police trap and he successfully vanishes. Medals and bravery awards follow.

An interesting aspect of this whole episode remains that these youth never realize the truth behind their arrest. They curse their luck and resign to their fate spending years in imprisonment.

Now, let me shed some light on the working of the Intelligence Bureau (IB). This is the most useless agency which does nothing, but to feed the government and media with concocted stories. That earns them croses of rupees from the government besides special powers. And they are least accountable because everything is done in a secretive manner. You may have heard often stories like; a dozen terrorists have landed in Delhi; half-a-dozen terrorists are roaming in Mumbai; ISI is taking roots in UP etc.

Now to back their claims, a Molvi type agent sporting a long beard and well versed with Islamic tenants is launched in some Muslim

locality. Most often, the Molvi either takes a rented accommodation near a mosque or in some cases makes mosque itself an abode. The pious nature of Molvi, his praying five times a day and some heart rending story easily earns him sympathy and attention. He starts befriending particularly educated Muslim youth. Slowly he identifies targets, harangues them with anti-India and anti-government lectures, laments over condition of Muslims and emphasizes the need for waging Jihad.

One day, he confides the group, that he was actually a Commander of Lashkar-e-Toiba (LeT) or some other organization. These youth, who are already brainwashed and enticed, now in a fit of emotions believe in the agent. Small weapons are distributed amongst them with a partial training of their working. Meanwhile, ammunition and vehicles and other things arrive. The agent is in touch with the sleuths in the IB and reports them with minute to minute happenings.

Finally, when the stage is set, the Commander calls for an operation. Even a recce is also done. Meanwhile, the IB informs the Special Cell, who puts a trap at the targeted place. These youth fall in their lap like ripe fruits without any resistance, along with arms and ammunition. They never know how they got into the police net. When police raids to nab their Commander, he is already back with the IB to explore newer pastures. He is never found. A terse news follows that so many terrorist were arrested and one managed to give police a slip.

These trapped youth curse themselves and feel guilty for rest of their life. Special Cell officers tell them that their crimes demand that they be killed in fake encounter, but having mercy on them, "we will send you to jail, where you will get out within six, seven years." These people also remain indebted to police, without knowing the background.

There are also cases where police plants incriminatory things like explosives, drugs on the detenues. The question remains, where they get such things. It is quite easy. For example, someone is

caught with a fake currency to the tune of Rs. 50 lakh. Since the punishment for Rs. 50 lakh or five lakh is same, it does not matter for the Police whether to charge the accused for a lower or a higher sum. They will charge the accused for just Rs. 5 lakh, who for lack of knowledge of law also remains indebted to them. Rest of Rs. 45 lakh fake currency is deposited in the safe confines and later planted on victims. Same is the case with smack, heroin, explosives and everything.

Both the Special Cell and the IB have procured huge farm hourses in the vicinity of Delhi to undertake unlawful activities. Those destined to be killed in fake encounters are not kept in police stations or at known facilities, they are lodged in these farm houses. They are detained for months and years there before they are killed at some "appropriate time".

These encounters usually take place in the evening or dead of night. A stolen vehicle and a gun is recovered. Those victims who are killed in such encounters are kidnapped in such a way that nobody knows their whereabouts. The sleuths also take care that no case is lodged against this kidnapping. If there is hue and cry, they will wait for things to cool down. The police of states also exchanges victims with each other. In every state, you have now special branches or cells or squads who directly take orders from the IB.

For example, Special Cell of Delhi Police will take two Kashmiris from the Special Operations Group (SoG) of Jammu and Kashmir Police and in exchange gives them two persons from this side, who are killed in Kashmir branding them Pakistanis. Since they never get recognized and local people also show indifference, police stories look credible.

Since this game is played at a very high level, local police is a mute spectator. Most of the time they don't even know what is happening. Most of the time local police also treats it as a usual kidnapping case, when the families lodge complaint.

With all authority, I want to inform you that encounter orders come

from higher authorities in the Home Ministry and all security agencies know an encounter is being managed at a particular day. A team which is designed to inspect the scene of encounter and report whether it was fake or not, prepares its report in advance, making this exercise also farce.

Have you ever noticed, that those killed in encounters carry all their details, their name, rank in the organization, etc, in their pockets when they face encounter? Further, they die even without firing a bullet and even if they fire, it never hits the target. Our police needs to be appreciated that during past few years in almost 100 encounters, not a single personnel was ever injured. Compare it with the army's encounters with real terrorists in Kashmir. In almost every battle, one or two personnel get bullet wounds.

It speaks, either our army is not as trained as the Special Cell of Delhi Police, or the encounter is fake. If the Police insists on genuineness of these encounters, then I suggest, they be posted in Kashmir to replace army. People of this nation will also realize their bravery.

I will tell you how brave our Special Unit is. If they ever come to know that a miscreant is armed with a knife, they will never dare to go close to him. They will only nab him, when they are confident that the miscreant is unarmed. I have worked as their informer. They would make sure from us that the culprit is totally unarmed when they go to apprehend him.

Dear Sir, the Special Cell is a group of licensed marauders. They have been highly communalized. They are venomous against Muslims. They hardly bother that somebody's family gets ruined, they are only concerned with their own rewards. Let me say, these Special Cell personnel are just human bodies with an animal soul. And to speak of their torture techniques, it is beyond your imagination. Even more brutal than that you see in films.

My only fault is that I refused to go alongwith them too long. They know, in the name of Islamic terrorism, you can book anyone, plant explosive, give name of some organization and make some hue and

cry in the media. Rest with great distress, I am pained to say, our courts too fall in line. I was in their confinement for over two months. When my father lodged a complaint in local police station and the family of my co-accused Nawab S/o Qamar gave a look out notice on TV. Then they produced us claiming we nabbed them with explosives when we were returning after two month training. We challenged it in the High Court. The High Court later directed the CBI to enquire, which has submitted its preliminary report. I don't think they will go too far to book their cousins in the IB and Special Cell. For the past one-and-half year, we have been identifying the place, where we were kept for two months. But, they are deliberately ignoring to put it on record.

I appeal to the Prime Minister Dr. Manmohan Singh to step in and put a stop on such activities. These agencies are not securing the country, but making it extremely insecure. Those youth, who could contribute in nation building, are consigned to jails or encounters. If we book a young man with dreams to do something for a nation, in a fake case and make him a terrorist, it is foolish to believe that he would remain loyal to you.

People who are jailed in such fake cases do think that if they ought to be punished heavily, then it was better for them to get arrested after really doing something. This is a dangerous trend. A rebellious thinking takes over. Even if they are released, no one is ready to own them.

Dear Prime Minister, it is high time to give a message to your security agencies. Fire can never douse fire. It needs water. Your security agencies are dousing fire with petrol.

I wish you to read the CBI report which has been submitted in the High Court, which clearly mentions names of the IB officers for whom I was working as an informer. And who also kidnapped me.

Here are names and number of officials for whom I was working

IB officer Khalid alias Majid: 9810702004

IB officer Aftab: 9810702004

ACP Sanjeev Yadav: 9810058002

Inspector Lalit Mohan, Hriday Bhushan: 9811980604, 8711980601

They had give me also a mobile phone with SIM 9873303646

My mobile for talking to IB officers: 9873131845

It is not difficult for any agency or the media to get details of calls from these numbers to dig out truth.

Yours only

Irshad Ali S/o Mohamamd Yunus,

Ward No 5 (High Risk) Cell No. 13, Jail No. 8, Tihar, Delhi- 1100 64.

Appendix II

S. No.	The Case & Year	Charges Under Sections	FIR No., Police Station & Sessions Case (S.C) No.	Date of Judgement & Judge	Years Spent in Jail (approx)
1	State *versus* Tanveer Ahmad, Shakil Ahmad, Ishtiaq Akhtar Dar, Md. Akhtar Dar, Md. Yusuf Lone, Abdul Rauf and Ghulam Md. **(1992)**	169/92, P. S. Lajpat Nagar, New Delhi| S. C No. 50/2001	Sections 4 and 5 TADA (P) Act; Sections 4 & 5 Explosive Substances Act read with Section 120B IPC; Sections 25, 54, 59 Arms Act	1st August 2002; S. N. Dhingra, Additional Sessions Judge, New Delhi	**10 years**
2	State *versus* Farooq Ahmed Khan, etc. **(1996)**	517/96, P. S. Lajpat Nagar, New Delhi| S. C No. 47/09	302,307, 120B, 124A, 212 IPC; Sections 3,4 & 5 of Explosive Substances Act; Section 25 of Arms Act	April 2010; S. P. Garg, Additional Sessions Judge, DJ-IV/ New Delhi District, Patiala House Courts	**4 years**
3	State *versus* Md. Amir Khan. **(1997)**	790/1996; 70; 71; 117/97; 137/97; 249/97; 262/97; 191/97; 751/97; 752/97; 379/97; 260/97; 951/97; 752/97; 405/97; 746/97; 631/1997, P. S. Various Police Stations in Delhi, Ghaziabad, Rohtak and Sonepat |S.C No. 51 of	34, 120B, 121, 121A, 122, 320, 307, 435, 436 of IPC; Sections 3, 4, 4(B), 5, 7 of Explosive Substances Act; Section 150 of the Railway Act	November 2000 to January 2012; Various Additional Sessions Judges of Sessions and District Courts in Delhi, Ghaziabad, Rohtak & Sonepat	**14 years**

		1998/2004; 25 of 2006/2009; 18 of 2010; 111/98; 116/98; 95/98; 11/98; 100/98; 108/98; 109/98; 128/98; 357/2007; 115/98; 137/98; 113/98120/98; 104/1998			
4	State *versus* Khongbantbum Brojen Singh & Anr **(2002)**	93/02, P. S. Kotla Mubarakpur, New Delhi	121, 121A, 212, 201, 120B IPC; Sections 3, 5, 20, 21, 22 of POTA, 12PP Act 10, 13 Unlawful Activities (Prevention) Act, 2004; Section 25 Arms Act	12th May 2009; J.R. Aryan, Additional Sessions Judge, New Delhi	**7 years**
5	State *versus* Hamid Hussain, Md. Shariq, Md. Iftekhar Ahsan Malik, Maulana Dilawar Khan, Masood Ahmed, Haroon Rashid **(2004)**	40/50 & 132/04, P. S. Special Cell, New Delhi|S. C. No.: 178/05 & 15/06	121,121A, 122, 123 & 120B IPC; Sections 4, 5 Explosive Substances Act; Sections 18,19, 20, 23 Unlawful Activities (Prevention) Act, 2004; & 379, 411 IPC	8th January 2010; Dharmesh Sharma, Additional Sessions Judge J-II, North, Delhi	**6 years**
6	State *versus* Irshad Ahmed Malik **(2004)**	47/04, P. S. Special Cell, Delhi S. C. No. 04/2009	121, 121A, 122, 123, 120B IPC; Section 25 Arms Act	8th November 2010; J. R. Aryan, Additional Sessions Judge, Delhi	**6 years**
7	State *versus* Ayaz Ahmed Shah **(2004)**	09/04, P. S. Special Cell, Delhi S.C. No. 133/05	121, 121A, 122, 123 IPC	22nd January 2009; R. K. Jain, Additional Sessions Judge, 01 (North Delhi), Delhi	**5 years**

8	State *versus* Saqib Rehman, Bashir Ahmed Shah, Nazir Ahmed Sofi, Hazi Gulam Moinuddin Dar, Abdul Majid Bhat, Abdul Qayoom Khan and Birender Kumar Singh **(2005)**	146/05, P. S. Kapashera, New Delhi S.C. No. 24/10	353, 186, 489(c), 482, 120B, 34 IPC; Sections 25 & 27 Arms Act; Sections 3 & 5 Explosive Substances Act	2nd February 2011; Virender Bhat, Additional Sessions Judge, Dwarka Courts, New Delhi.	**6 years**
9	State *versus* Khurshid Ahmad Bhatt **(2005)**	122/05, P. S. Special Cell, New Delhi	121,121A, 122, 123, 120B of IPC; Section 25 of Arms Act	26th March 2011; Anuradha Shukla Bhardwaj, Juvenile Justice Board, New Delhi	**6 years**
10	State *versus* Salman Khurshid Kori, and Others **(2006)**	96/06, P. S. Special Cell, New Delhi S. C. No. 236/1/10	121, 121A, 122 IPC; Section 5 Explosive Substances Act; Section 18 Unlawful Activities (Prevention) Act, 2004	13th December 2011, Judge: Raj Kapoor, Additional Sessions Judge-02, West/Tis Hazari Courts, Delhi	**5 years**
11	State *versus* Maurif Qamar and Md. Irshad Ali **(2006)**	10/2006, P. S. Special Cell {CBI's Case FIR No.:RC.3 (S)/2007/SCU. V/CBI/SCR-II, New Delhi [Dated: 27.07.2007]} CBI Case No.:RC.3(S)/2007 SCU.V/SCR-II, CBI/New Delhi	121, 121A, 122, 123, 120B IPC; Sections 4 & 5 of Explosive Substance Act & Section 25 of Arms Act.	Date of Submission of Police Closure Report by the CBI: 11th November 2008; S.S. Mohi, Additional Session Judge, Tis Hazari Courts, Delhi	**5 years**

12	State *versus* Gulzar Ahmed Ganai and Md. Amin Hajam **(2006)**	95/06, P. S. Special Cell, New Delhi S. C. No. 13/2007	121, 121A, 122, 123, 120B IPC; Sections 4 & 5 Explosive Substances Act & Unlawful Activities (Prevention) Act, 2004	13th November 2009; Dharmesh Sharma, Additional Sessions Judge-II, North Delhi, Delhi	**3 years**
13	State *versus* Tariq Dar **(2006)**	59/06	121/121A/ 122/23/ 120 B IPC read with 4/5 Explosive Substances Act; 18/20/23 UAPA and 14 Foreigners Act.	24th January 2007; CMM Seema Maini	**3 months**
14	State *versus* Imran Ahmed & Anr. **(2006)**	89/06, P. S. Special Cell, New Delhi S. C. No. 32/2007	121, 121A, 122 r/w 120B IPC; Sections 17, 18, & 20 of Unlawful Activities (Prevention) Act 2004; Section 5 Explosive Substances Act	26th April 2011; Judge: Surinder S. Rathi, Additional Sessions Judge-02, Tis Hazari Courts, Delhi	**5 years**
15	State *versus* Md. Mukhtar Ahmad Khan **(2007)**	48/07, P. S. Special Cell, New Delhi I S.C. No. 48/07	121A, 123,120B IPC; Sections 18, 20, & 23 of Unlawful Activities (Prevention) Act 2004; Sections 4 & 5 of Explosive Substances Act	21st April 2012; Surinder S. Rathi, Additional Sessions Judge-02, Tis Hazari Courts, Delhi	**5 years**
16	State *versus* Md. Iqbal @ Abdur Rehman , Nazarul Islam & Jalaluddin **(2008)**	23/08, P. S. Special Cell, New Delhi S. C. No. 09/2009	121, 121A, 122, 123, 120B IPC; Sections 18, 20, 23 of Unlawful Activities (Prevention) Act 2004; Sections 4 & 5 Explosives Acts	19th November 2011; Pawan Kumar Jain, Additional Sessions Judge, Tees Hazari Courts, Delhi	**3 years**

APPENDIX III

Glossary of Criminal Offences:

- Indian Penal Code (IPC), 1860
- Explosive Substances Act, 1908
- Arms Act, 1959
- Unlawful Activities (Prevention) Act, 2004— (UAPA)
- Terrorist and Disruptive Activities (Prevention) Act, 1987— (TADA)
- The Prevention of Terrorism Act, 2002— (POTA)
- Railway Act, 1989
- Public Premises (Eviction of Unauthorised Occupants) Act 1971— (P.P Act)

Indian Penal Code, 1860

Section No.	Criminal offence
34	criminal act(s) done by several persons in furtherance of the common intention of all
120	voluntarily concealing by any act or illegal omission the existence of a design to commit an offence punishable with imprisonment
120 B	criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards
121	waging, or attempting to wage war, or abetting waging war against the Govt. of India
121 A	conspiracy to commit offences punishable by Sec. 121, IPC;

	i.e. conspiracy to wage, attempt to wage war, or abet waging war against the State (Govt. of India)
122	collecting arms, etc., with the intention of waging war against the Govt. of India
123	concealing with intent the existence of a design to wage war against the Govt. of India and thereby facilitating it
124 A	sedition; attempt to engender hatred or contempt, or excite or attempt to excite disaffection towards the Govt. of India, through words, either spoken or written, or by signs, or by visible representation, or otherwise
186	obstructing public servant in discharge of public functions/duties
201	causing disappearance of evidence of offence, or giving false information to screen offender
212	harboring an offender, or concealing a person whom one knows or has reason to be believe to be the offender
300	murder
302	punishment for murder
307	attempt to murder
308	culpable homicide
320	causing grievous hurt
353	assault or criminal force to deter a public servant from discharge of his duty
378	theft
379	punishment for theft
411	dishonestly receiving stolen property
435	mischief by fire or by explosive substance, with an intent to cause damage to the amount of rupees one hundred or upwards [or(where the property is agricultural produce) ten rupees or upwards]
436	mischief by fire or by explosive substance, with an intent to destroy house, etc.
441	criminal trespass
482	using a false property mark

489	possession of forged or counterfeit currency-notes or bank-notes

Exploseive Substance Act - 1908

Section No.	Criminal offence
2	explosive substance: materials for making any explosive substance; also any apparatus, machinery or implement or material used or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement
3	causing explosion likely to endanger life or property
4	attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property
4 (b)	any person who unlawfully and maliciously makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in [India], or to enable any other person by means thereof to endanger life or cause serious injury to property in [India]
5	making or possessing explosives under suspicious circumstances
6	Punishment for abettors: any person who by supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to the commission of any offence under this Act shall be punished with the punishment provided for the offence
7	restriction on trial of offences.; no Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Central Government

Arms Act, 1959

Section No.	Criminal offence
25	manufacturing, selling, transferring, repairing, testing, conversion, etc. of any arms and ammunition in contravention of Section 5, or bringing into or taking out of India any arms or ammunition of any class or description in contravention of Section 11
27	use of arms or ammunition in contravention of Section 5 or using any prohibited arms or ammunition in contravention of Section 7
28	using or possessing firearm, or imitation of firearm with an intent to resist or prevent the lawful arrest or detention of himself or any other person
29	knowingly purchasing arms, etc., from unlicensed person or for delivering arms, etc., to persons not entitled to possess the same

Unlawful Activities (Prevention) Act, 2004 — (UAPA)

Section No.	Criminal offence
10	penalty for being members of an unlawful association
13	taking part in or committing, advocating, abetting, advising, inciting or assisting in the commission of any unlawful activity
15/16	terrorist act/punishment for a terrorist act
17	raising fund for the purpose of committing a terrorist
18	conspiring or attempting to commit, or advocate, abet, advise or incite or knowingly facilitate the commission of, a terrorist act or any act preparatory to the commission of a terrorist act
19	voluntarily harbor or conceal, or attempt to harbour or conceal any person knowing that such person is a terrorist
20	being member of terrorist gang or organization

23	enhanced penalties: intent to aid any terrorist, or attempt to contravene any provision of, or any rule made under the Explosives Act, 1884 (4 of 1884) or the Explosive Substances Act, 1908 (6 of 1908) or the Inflammable Substances Act, 1952 (20 of 1952) or the Arms Act, 1959 (54 of 1959), or unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare

Terrorist And Disruptive Activities (Prevention) Act, 1987— (TADA)

Section No.	Criminal offence
4	commit or conspire or attempt to commit or abet, advocate, advise, or knowingly facilitate the commission of any disruptive activity or any act preparatory to a disruptive activity
5	possession of certain unauthorized arms and ammunition, etc., in specified areas

The Prevention Of Terrorism Act, 2002 — (POTA)

Section No.	Criminal offence
3	punishment for terrorist acts: an act done with the intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people by using bombs, dynamite, explosive or inflammable substances, firearms, lethal weapons, poisons noxious gases, chemicals (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person(s) or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of .any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies

4	possessing of certain unauthorized arms, ammunitions, bombs, dynamites, or hazardous explosives
5	intent to aid any terrorist, contravening any provision of, or any rule made under the Explosives Act, 1884, the Explosive Substances Act, 1908, the Inflammable Substances Act, 1952 or the Arms Act, 1959
20	offence relating to belonging to or professing to belong to a terrorist organization
21	offence relating to support given to a terrorist organization
22	offence relating fund raising for a terrorist organization

Railway Act, 1989

Section No.	Criminal offence
150	maliciously wrecking or attempting to wreck a train, with the intent or knowledge that he is likely to endanger the safety of any person travelling on or being upon the railway: a) puts or throws upon or across any railways, any wood, stone or other matter or thing; or b) takes up, removes, loosens or displaces any rail, sleeper or other matter or things belonging to any railway; or c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway; or d) makes or shows, or hides or removes, any signal or light upon or near to any railway; or e) does or causes to be done or attempts to do any other act or thing in relation to any railway

Public Premises (Eviction of Unauthorised Occupants) Act, 1971— (PP Act)

Section No.	Criminal offence
11	unlawfully occupying any public premises; punishable with simple imprisonment for up to six months or with Rs 5000, fine.

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Jamia Teachers' Solidarity Association (originally Jamia Teachers' Solidarity Group) is a collective of university teachers, formed in the aftermath of the Batla House 'encounter' in 2008. Though initially focusing on the demand for a judicial probe into the Batla House 'encounter', JTSA has emerged as an important voice arguing for rule of law, and against illegal detentions, encounter killings, and communal witch hunts by anti-terror agencies.

JTSA conducts fact-findings, investigations, publishes reports, engages in legal aid work as well as collaborates with a range of civil society groups on issues of democracy, justice and civil rights. For more on the activities of JTSA visit, www.teacherssolidarity.org

JTSA is a non-funded organization which depends on the goodwill, support of all democratic and progressive forces and individuals who would like to see our work to go on. We welcome contributions to sustain our campaigns and legal aid work. Please write to info.jtsa@gmail.com if you would like to support us.

This report documents 16 cases – 15 of them relating to the Special Cell of the Delhi Police – where men accused of being terrorists belonging to HUJI, Laskhar-e -Toiba or Al Badr were acquitted by the courts. The courts ruled that innocent men had been targeted through tampering or fabrication of evidence. Through detailed analysis of judgements, this report unravels the sordid manner in which false cases are foisted upon innocents and how the Special Cell uses the obvious immunity it enjoys to manufacture stories of guilt.

This report raises serious questions over the credibility of a force that is touted as one of the most elite counter-terrorism agencies in the country. It asks if we can trust an agency that has been implicated in a series of frame-ups of innocents.

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